

IN THE DISTRICT COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT WUSE ZONE 6
BEFORE HIS WORSHIP AMANWACHI CHIOMA
COURT 11

SUIT NO;CV/SCC/02/23

DATED; 27th November,2003

BETWEEN

FOREVER INCOME COOPERATIVE SOCIETY LIMITED.....CLAIMANT

AND

M C BUDDY PROPERTIES LIMITED.....DEFENDANT

JUGDEMENT

The claimant by compliant forms SCA2 and SCA3 claims against the defendant as follows';

1.AN order of this honourable court directing the defendant to pay to the claimant the sum of two million, four hundred and seventy five thousand naira (2,475,000.00) only being the sum paid by the claimant to the defendant as initial deposit for the purchase of plots of land at prestwood estate at katampe Extension Mpape Fct.

2.AN order of this honourable court directing the defendant to pay the sum of one million naira (N 1,000,000,00) only being General Damages to the claimant.

3An order of this honourable court directing the defendant to pay the sum of five hundred naira (N500, 000,00) only as cost litigation.

The defendant was served with demand notice as provided in form SCA 1 before the commencement of hearing in this court as well as

originating processes evidenced by affidavit of service deposed to by court bailiff EKO EMMUEL BASSEY, it is the upon an application by the claimant's

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NAME Onwughasoma Nivian C.

SIGN [Signature]

DATE 5/12/23

counsel brought pursuant to order 2 rules 11 of the district court rules of the FCT 2021 for abandonment of part claim to give the court jurisdiction to determine this suit claim from N2.475,000.00 to the sum of 2million naira, was granted as prayed.

Hence the court being satisfied that the defendant was aware of the hearing date, commenced hearing on the 7th November,2023 with the evidence of the cw1 who testified on oath and states that the claimant is a cooperative society duly registered within Nigeria, while the defendant is a real estate developer and the owner of prestwood Estate katampe Extension MpapeFct that parties agreed to purchase a plot of land situate at prestwood estate katampa Extension Mpape Fct from the defendant, that the claimant paid a total sum of (Two million , (N2,475,000.00)only to the defendant in seven instalments and were issued with Receipts by the defendant as follows;

- 1.N 135,000.00 was paid on 1/2/2020
- 2.N 360,000,00 was paid on 17/2/2020
- 3.N360,000,00 paid on 14/9/2020
- 4.N360,000,00 paid on 24/9/2020
- 5.N360,000,00 paid on 26/10/2020
- 6:N360,000,00 paid on 16/11/2021
- 7.N450,000,00 paid on 24/11/2021
- 8.N450,000,00 paid 22/12/2021 respectively.

Cw1 informed the court that upon payment of these sum, mentioned above the defendant refused to allocate the said land to the claimant neither did the defendant commence construction as agreed by parties and that there were no genuine reasons for the breach of contract after two years of waiting the claimant had no option than to institute this suit in small claims court. Finally, cw1 urged the court to grant all reliefs sought in their claim as the claimant has suffered serious economic setback as its members have threatened to pull out from the cooperative.

The following documents were tendered and marked as exhibits

Exhibit cw1 – memorandum of understanding M.C Buddy Properties Limited dated 14th February,2020.

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NAME *Onwusaomya Vivian*

SIGNATURE *[Signature]*

DATE *5/12/23*

Exhibit cw2 - cw8 Mc Buddy properties limited payment receipts

Exhibit cw9 Allocation of prestwood Estate update dated 30th June, 2022

Exhibit 10 Letter of termination of memorandum of understanding dated 17th April, 2023

As earlier stated this case was not contested by the defendant despite being put on notice of the pendency of this case evidenced by affidavit of services on each adjournments as a prime facie proof that the defendant was put on notice in the case see MGBENWELU V. OLUMBA 2016 LPELR 42811 SC. It was held

" it is settled law that an affidavit of service by the bailiff of a court is a prime facie evidence of service and also if uncontradicted is sufficient to sustain the issue it asserts"

also in the case MFA & ORS V. INONGHA 2014 LPELR 22010 SC it was held

"it is also settled that once a party has been afforded the opportunity to present his case and fails to take advantage of it, he cannot be heard to complained that his right to fair have been breached"

See chapter 4 section 36 (1) of the 1999 constitution of the federal republic of Nigeria as Amended.

upon an application by the claimant's counsel brought pursuant to Article 7 (4) of the district court practice directions on small claims 2022

"where a defendant fails to file an answer to the claim or counter affidavit to the application for undefendanded claims such a defendant shall be held to have admitted the claim."

Also in Article 9 (2) which states

"when the claim is called hearing and the claimant appears but the defendant does not appear provided there is proof of service the district court judge shall proceed with the hearing of the claim and enter judgment as far as the claimant can prove his claim'

The defendant was foreclosed from cross examination and defence

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NAME *Omarugsoan for Nivian C.*

SIGN *Mfs*

DATE *5.12.2023*

The issue for determination is whether the claimant has proved this case to be entitled reliefs sought, hence the trial court has the duty to evaluate the evidence before it and be satisfied that it's credible and sufficient.

Where evidence is unchallenged or contradicted, the onus of proof is satisfied on minimal proof since there is nothing on the other side of the scale MOBILE OIL (NIGERIA) LTD V. NATONAL OIL & CHEMICAL MARKETING CO LTD (2000) 9NWLR part 671 page 44 at 52 para H per Aderemi JCA.

In the light of the above and based on the unchallenged evidence of the claimant, being satisfied by the court, I hereby ordered as follows,

1. The defendant is ordered to pay the claimant the sum of two million naira (#2,000,000.00) only as initial deposit for the purchase of plot of land at prestwood estate katampe Extension Mpape F.c.t
2. The defendant is order to pay the claimant the sum of One and fifty hundred naira(#150,000.00) only as general damage
3. The defendant is ordered to pay the claimant One hundred (#100,000.00) only as the cost of litigation.

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NAME Onyiah Soamya Nivian C.

SIGN [Signature]

DATE 5/12/23