

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

CHARGE NO: FCT/HC/CV/890/19

BEFORE HIS LORDSHIP:

HON. JUSTICE MUAWIYAH BABA IDRIS

CLERK OF THE COURT: O. TOBI BLESSING

BETWEEN

MR. SOLOMON OJUEKAIYE.....CLAIMANT/APPLICANT

AND

1. KINGSFEM ESTATE LIMITED
2. MR. EMMANUEL OLUFEMI AKINLAWON..... DEFENDANTS

JUDGEMENT

The writ is brought under the undefended list Procedure. The Claims against the Defendant are for:

1. An order directing the Defendant to immediately pay to the claimant the sum of N51, 000,000 (Fifty One Million Naira) only being the outstanding balance owed to the Claimant.
2. Cost of this suit at N3, 000,000.00 (Three Million Naira) Only.

The writ is supported by a 30 paragraphs affidavit deposed to by the Claimants. 15 exhibits are attached.

Paragraph 4 – 26 are reproduced here under.

4. That by a letter of offer dated 12th of May,2017 the defendant approached me and offered for sale their suits. 0073 and 0074 in their proposed Ultra Modern Fire- Storey Shopping/Chemical Complex, hod Alone, *GA247 Ahmadu Bello Way Abuja.*

(Copy of the said letter of offer dated 12th may, 2017 is attached and marked Exhibit A.)

5. I accepted the offer and entered into a contract with the 1st Defendant Company for the purchase of Suites 0073 and 0074 on grounds that the said structure will be completed within a period of one year.
6. I was furnished with a payment plan which I complied with, paying up the totality of the sum of N60, 000,000.00 (Sixty Million Naira). (A copy of the payment plan is herewith attached and marked **Exhibit B**).
7. I paid the sum of **N60, 000,000.00(Sixty Million Naira)** as full and final payment for the purchase of the property as agreed between myself and the Defendants. (Copies of the receipt of payment is herewith attached and marked as **Exhibit C1,C2,C3,C4, & C5**).
8. Not only did the Defendants fail to deliver possession of the **Suites 0073** and 0074 in May 2018 as promised, they also deliberately avoided contact and evaded communication with me.

9. At a meeting held at the Defendant's office, I fully expressed my disappointment with the services of the Defendants and pursuant to this the Defendants by a letter dated 8th February, 2018, acknowledged meeting with me and resolved to appease me by temporarily offering me the immediate use of **Suites 3001-3004** pending the completion of the **Suites 0073 and 0074** which I paid for.
10. Further to the above, the Defendants with the letter of 8th February, 2018, also forwarded 2 offer letters dated 31st January, 2018, are herewith attached and marked ***Exhibit D1, D2 and D3***).
11. Considering my desire to put the antics of the Defendants to rest and not minding the dissatisfaction, I accept to temporarily use the Suites proposed by the Defendants, pending the completion of the ***Suites 0073 and 0074*** which I paid for.
12. I was astonished at the summersault and an attempt to by the Defendants to vary my contract with them through their 2 letters craftly dated 31st January 2018 and another one dated 26th March 2018 wherein the Defendants appeared to be offering to me afresh a sale of Suites 3001 -3004 which they only informed me at the meeting was meant to pacify me on a temporary basis, having so failed in delivering on their promise of constructing my desired property which I paid for,

within the specify period. (A copy of the letter dated 26th March, 2018 is herewith attached and marked Exhibit E).

13. My astonishment and extreme disappointment was not just the colossal breach of the contract I had with the Defendants, but also the Defendant's company's deceptive attempt to shove down my throat another property outside the agreed Suites 0073 and 0074 contrary to the executed terms and conditions of offer as contained in paragraph 1 of the offer letter dated 12th May, 2017.
14. Consequent upon the Defendants' persistent failure to commence construction on the site paid for and their attempt to drastically change the subject matter of the contract whilst evading to handover suites 3001-3004 temporarily, as promised, I wrote a letter dated 20th April, 2018 and demanded for a refund of my N60,000,000 (Sixty Million Naira) paid to the Defendants. (The said letter dated 20th April, 2018 is herewith attached and marked Exhibit F).
15. I know that the failure of the Defendants to deliver possession of the Suites 0073 and 0074 which I paid for on the agreed date is a fundamental breach of contract.
16. I am also aware that the non-performance of the Defendants' obligations vitiated the contract, leaving me no other option than to rescind and/or terminate the contract.

17. I know as a fact that Suites 3001-3004 and/or 0068 and 0069 were never a part of the initial contract which the Defendants conveniently breached by failing to deliver possession.
18. Rather than fulfilling their obligation under the initial contract, the Defendants demonstrated a sufficient measure of disregard for the emotional, psychological and financial loss of time, money and resources coupled with the huge returns that would have prudently accrued to me had I deposited the N60,000,000.00 (Sixty Million Naira) in my bank account.
19. I went all out of my comfort to borrow (with interest) a substantial part of the N60, 000,000.00 (Sixty Million Naira) which I used for the payment of my desired ***Suites 0073 and 0074***.
20. The Defendants knowing fully well that they cannot fulfill the terms of the contract entered into with me agreed to refund **N54,000,000.00** (Fifty Four Million Naira) only, having deducted 10% of my **N60,000,000.00** (Sixty Million Naira) as Administrative and Agency fee. This information the Defendants communicated to me vide their letter dated 3rd May, 2018. (The letter dated 3rd May, 2018 is herewith attached and marked Exhibit G).
21. Despite the fact the Defendants had giving an undertaking through their letter of 3rd May, 2018 to refund and pay me the sum of **N54,000,000.00**

(Fifty Four Million Naira) only till date they have only paid back a paltry sum of N3,000,000.00 (Three Million Naira) and the interest on the moneyborrowed has accumulated considerably.

22. The refusal of the Defendants to pay back my money coupled with the lack of returns on my investment has dipped my name in the mud and my integrity is currently at stake with those from I have borrowed money.
23. The act of the Defendants in withholding my money without delivering value for my investment has caused me irreparable loss, damage and untold hardship.
24. I wrote to the Defendants through my lawyers (Messrs. Kayoed Ajulo & Co. castle of law) on 31st October, 2018 and the Defendant replied through their letter of 14th November, 2018 acknowledging their indebtedness in the sum of N51,000,000.00(Fifty One Million Naira) and promising to pay. (The letter of kayode Ajulo & Co. Castle of law dated **31st October, 2018** and the 1^s Defendant's reply letter dated 14th November, 2018 are hereby attached and marked Exhibits H and I).
25. Till date the Defendants have neither shifted grounds nor liquidated any part of their indebtedness of **N51, 000,000.00**

26. That the defendants have not denied owing me and I am confident they have no defence to this action.
27. That despite the travails I have suffered in the hands of the Defendants I am still made to incur lawyer's fees in writing letters to the Defendants and in filing this suit at the cost of **N3,000,000.00** (Three Million Naira.)(The receipt of N3, 000,000.00 issued to me by the Firm of Kayode Ajulo & Co. Castle of law is hereby attached and marked Exhibit J.)

The defendants filed notice of intention to defend and an affidavit in support of same. One Adegbulu Olusegun, Head of Administration of the defendant deposed to 41 paragraphs affidavit, 10 Exhibits are attached.

Paragraphs 35 of the affidavit in support of Notice of intention to Defend are reproduced as follows:-

6. The Claimant was told that a suite of about 42 square will cost N50, 000,000.00(Fifty Million Naira Only).
7. The Claimant negotiated and pleaded to invest in two (2) suites at a reduced rate of N60, 000,000.00 (Sixty Million Naira Only) that is N30, 000,000.00 (Thirty Million Naira Only) per suite. Said letter is hereby pleaded said letter is hereby pleaded and attached as Exhibit 1).
9. That it was within the knowledge of the Claimant, that the proposed development is designed to be a ten(10) storey building.

10. That Construction of a ten storey building will take an average of 4-5 years to be completed.
11. That no agent or representative of the 1st Defendant promised the Claimant that his Suites 0073 & 0074 will be ready within a year.
12. Payment plan was agreed upon by the Claimant and the 1st Defendant, the said payment plan was executed by both parties. (The said letter is hereby pleaded and attached as Exhibit 2).
13. In the last paragraph of the said payment plan, the Claimant agreed that refund shall be made to him Pursuant to the sale of the said suites.
14. On the 15th day of May, 2017 the Claimant made a part-payment the said investment to the 1st Defendant.
15. On the 9th day of June, 2017 the Claimant also made various payments to the 1st Defendant via E-transaction, (the payment receipts are hereby attached as Exhibit 4 A-D)
16. In paragraph 6 of the Claimant's Affidavit, he clearly agreed and consented that he was furnished with the payment plan and he complied with it.
17. Contrary to paragraph 7 of the Claimant's affidavit, the Claimant did not purchase the property.
18. The Claimant invested in the construction and development of the property.

19. Contrary to paragraph 8 of the Claimant Affidavit in support of his motion, the Defendants did not promise to deliver suites 0073 & 0074 to the Claimant in May, 2018.
21. That the Claimant also pleaded with the representative of the 1st Defendant to give him agency of the said value of suites 0073 & 0074.
22. Agency of 5% in the sum of **N3,000,000.00 (Three Million Naira Only)** was paid to him through his cronies, one Barr. Olugbenga Bamidele of legal Aid Council Abuja, on the 9th day of June, 2017. (A receipt of the said payment is hereby pleaded and attached as Exhibit 5).
23. That barely a year after the Claimant had invested in the 1st Defendant's Company for the development of the said ten storey building he came back requesting that he needs an office space.
24. The 1st Defendant's representative then, offered the Claimant **Suites 3001 – 3004** on the 3rd Floor of Phase 1 of GA247 which is near completion at the rate of **N100,000,000.00 (One Hundred Million Naira Only)**.
25. Alternatively the 1st Defendant representative also offered Suites 0068 & 0069 which is near completion at the rate of **N30,000,000.00 (Thirty Million Naira Only)**.

26. That on the 26th day of March, 2018 the 1st Defendant wrote a letter reminding the Claimant of the two (2) different offers made to him on 31st January, 2018 and the need for him to make his choice.
27. That on the 20th day of February, 2018 the Claimant wrote a letter to the 1st Defendant and in the said letter he agreed that:
 - i. The suites 0073 & 0074 are yet to be completed.
 - ii. Alternative suites be provided.
 - iii. Accept to buy suites 0068 & 0069 at your promo price of Fifteen Million Naira N15, 000,000.00 (Fifteen Million Naira Only) per Suites.
 - iv. When the new site is completed I will either surrender or buy the four units plus 2 other units out rightly.
29. The Company considering the Claimant as one of the investors transferred the sum of N3,000,000.00 (Three Million Naira Only) through the First bank of Kingfem Estate Ltd. To the Claimant on the 3rd day of September, 2018 in the new project. (Evidence of the said transfer is hereby pleaded and attached as Exhibit 6).
30. The Claimant failed to abide or fulfill any of the obligation put forward by him.
31. On the 8th day of February, 2018 the 1st Defendant wrote a letter highlighting the major

points of their meeting. (The said letter is hereby pleaded and attached as Exhibit 7).

32. The Defendant thereafter made provision for alternative suites for the Claimant in his letter dated on 26th March, 2018.(The said letter is hereby pleaded and attached as Exhibit 8)
33. On the 20th of April, 2018 the Claimant wrote a letter demanding for refund of **N60, 000,000.00 (Sixty Million Naira Only) .**
34. The 1st Defendant replied to the said letter on the 3rd of May, 2018 and reminded the Claimant that he was aware of the nature and the level of the site as at the time he voluntarily invested in it. (The said letter is hereby pleaded and attached as Exhibit 9).
35. In Response to the letter of the Claimant's attorney dated 31st of October, 2018 the 1st defendant wrote a letter dated 14th November, 2018 (The said letter is hereby pleaded and attached as Exhibit 10).
36. The Defendant has not defaulted any terms of the agreement reached with the Claimant.
37. Construction work is ongoing at the site presently.
38. The Claimant on the 15th of November, 2018 used the officers and men of the Nigerian Police Force to arrest and detain the staff of the 1st Defendant.

It is clear from the content of Exhibit G that the defendant agreed to refund the sum **N54,000,000.00** and paid N3,000,000.00 only leaving a balance of **N51,000,000.00**. The Defendant by

Paragraphs 33,34, and 35 admitted owing the Claimant **N51,000,000.00** and Exhibit 10 attached to the affidavit in support of Notice of intention to defend shows that the 51,000,000.00 is still outstanding and remains unpaid.

I agree with the Claimant that the defendant has no defence to suit. I do not subscribe to the argument of the defendant that because of the content of Exhibit 10 the claimant shall wait till when suites Nos. 0073 and 0074 are sold before the refund can be made. The Important thing is there is a clear admission of indebtedness by the defendant.

I do not hesitate to invoke the provision of Order 35 Rule 4 to refuse to give to the defendants leave to defend this suit. Leave is therefore refused.

Consequently Judgement is entered in favour of the Claimant in terms of the reliefs sought in the writ of summons. To wit

1. An order directing the Defendant to immediately pay to the claimant the sum of N51, 000,000 (Fifty One Million Naira) only being the outstanding balance owed to the Claimant.
2. Cost of this suit at N3, 000,000.00 (Three Million Naira) Only.

HON. JUSTICE MUAWIYAH BABA IDRIS
6/5/19

APPEARANCES

1. Zion .H. Zubairu Esq for the Claimant
2. Lawrence Alabi Esq with Josephine I and Mary E.A.