IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON THE 6TH DAY OF December, 2019

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

COURT 26.

SUIT NO.: FCT/HC/CV/3005/17

BETWEEN:

HEIDI WENDISCH ----------PLAINTIFF

AND

SEASON'S CORPORATE WORLD LIMITED----------DEFENDANT

JUDGMENT

In this case Heidi Wendisch alleged she, a purchaser by instalment, invested into purchasing a house- 2 plot of 1000 sqm. Space for the development of 4 bedroom semi-detached duplex at plot D2010 Zhigakuchi, Mpape 2 layout. The estate in question is being developed by Seasons Home at their Maitama Aleiro Hills Estate, the defendant, realtors, property manager and developers. She alleged that the price of each of the plot is N5Million.That she was allocated plot 000000077/78 and was issued a Provisional Letter of Allocation for block B77 and B78.The purpose for the development was purely residential.

She attached a copy of the said letter of provisional of allocation as Exhibit A. She alleged that she paid N3Million initially which is about 50% of the price. However the total price of the 2 plots is N10Million. She as a purchaser paid N3Million on the 17th day of January, 2016. She also paid a total of N4.5Million between 22nd July of 2016 and 28th day of February, 2017. That these payment were as agreed to by the parties which is monthly payment of N500, 000= each month to be completed within 18 months. The said payment together with the initial lump sum of N3Million

were all part of the payment for the land. This monthly N500,000.00 was some of the terms and conditions included in the agreement of purchase by instalment.

The parties also agreed, according to the claimant-Heidi Wendisch, that after payment of 30% deposit of the purchase price of N10,000,000.00 the claimant will be given access to the plots after payment of 50% of the purchase price. This is as contained in the Letter of Provisional Allocation notwithstanding the above condition she claims that there was no Terms and conditions issued by the defendant and no discussion or agreement by the parties too.

Anyway she accepted the Allocation and signed the acceptance clause on the foot of the Letter Provisional Allocation before commencing the payment of N500, 000.00 monthly instalmental payments. She attached the receipt of payments to buttress her point as acknowledged by the Defendant.

Having paid more than 55% of the amount for the land based on clause No (IV) in the letter of allocation she demanded to have access to the 2 plots having satisfied the condition set out in the provisional letter of Allocation. The defendants failed to allow her access to the said plot B77 and B78. She made several demands to the management but all were abortive.

Sometimes in march 2017 she orally notified the Defendant that he intends to or has plan to terminate the contract and demanded a refund of the monies paid so far in the transaction. The Defendant replied by sending her a Document which she attached, which is the condition for refunding monies paid by their customer by instalments. In the letter the Defendant stated that they only make a refund on the condition that there should be a formal application for refund (in writing), stating reason for the refund and stating the duration of the investment or transaction with the company-Defendant. And that any termination will be granted after the plot involved has been purchased by another subscriber, as same has been tied down over a period of time there by denying other subscribers with interest on the plot the opportunity of purchasing same at that time. That the refund also comes with payment of withholding tax of 25% on the amount of money to be refunded. She also pleaded this letter.

Angered by this letter the Claimant wrote a letter to the Defendant on the 7/6/17 notifying them of her intention to terminate the contract/ transaction and also a notification of her intention to take legal action if the Defendant fail to refund the said monies after 14 day of receipt of the said letter. She also attached this letter.

Based on the Defendant's failure to refund the monies as demanded, on the 26th September, 2017, she instituted this action claiming the following against the defendant:

1. A Declaration that the Defendant breached the Contract between the parties by failing to hand over the plot 877 and 878 at Season Home Maitama Aleiro Hills estate plot D2010 Zhigakuchi, Mpape 2, layout Abuja, FCT.

2. An Order mandating the Defendant to refund in full the sum of N7.5M only being the payment and monies had and received by the Defendant from the Plaintiff for the said plot 877 and 878 at the Res without giving contractual value.

3. Interest of 20% on the said N7.5M from 31/7/17 being the date of the unsatisfied letter of Demand for Refund issued by the Plaintiff to the Defendant.

4. General and Exemplary Damages of N30Million against defendant for breach of contract.

5. Special Damages of N2.5Million against the Defendant being Plaintiffs expenses for Pre-litigation, legal Advising and consultancy as a result of the Breach of the contract.

6. Omnibus prayer

She testified as PWI, tendered the Document already list in support of her case.

On their own part the Defendant states that they are not in breach of any contract and that the Plaintiff is not entitled to any declaration. That the Plaintiff breached the contract between it and the Defendant. Again that the Plaintiff is not entitled for any refund of the N7.5million being part payment for the land sold to her by the Defendant.

That the Plaintiff is not entitled also to the 20% of the said sum of N7.5 million from 31/7/17 or any time at all. Also that the plaintiff is not entitled to any General and Exemplary Damages of N30Million or any sum at all for the alleged breach of contract. Furthermore that Plaintiff is not entitled to any special Damages of N2.5M or any amount at all for professional legal services. They urged the Court to dismiss claim of the plaintiff in it's entirely with the substantial cost for being frivolous, speculative, gold-digging and Constituting an abuse of process of the Court. The Defendant tendered 4 documents marked D1-D4.

The parties opened and closed their cases after full hearing. In its final Address the Defendant raised a sole issue for determination which is:

> **''Whether the plaintiff has adduced cogent and sufficient evidence to establish her case before this Court so as to warrant the grant of the relief contained in her Writ of Summons and Statement of Claim".**

Her counsel C.U Ugwunebo Esq argued and submitted, answering the sole question in the negative against the backdrop of the content of EXH2. Which is the special Term and Conditions that regulate the agreement between the Plaintiff and the Defendant which according to them the Plaintiff accepted and endorsed on the 17/5/16, when she accepted the provisional Allocation of the 2 plots. He submitted that from evidence adduced, the Plaintiff woefully failed to establish any of the claims contained in her Writ of Summons and Statement of Claims.

On the allegation of breach of contract the learned Counsel for defendant submitted that **in paragraph 4 of Exhibit 2**, the access to the plot would be given to the Plaintiff upon payment of 50% of the purchase price of the plots. That the Defendant gave the Plaintiff unfettered access to the plots even before she made the 50%payment for same as they showed her the 2 plot allocated to her. That the said plots are still available for her to develop.

That on cross-examination the PWI admitted that she never requested access from the Defendant either in writing or through Watsapp conversation **Exhibit 9, that s**he had throughout the period of the transaction with Defendant's marketing officer-DW2 neither was she refused any access by the Defendant. That she was quick to write EXH5-The

Letter of demand for refund of deposit already paid and the reason for the letter as stated in paragraph 4 of the same letter thus:

Paragraph 4 Exhibit 5

"**It is however rather disappointing and unnecessary to note that contrary to the assurance given before I indicated interest in and commenced payment for the allocation your company has (over (1) year failed, refused and neglected to develop the estate and it appears you do not have any plans in place to commence development in the said estate in the near future".**

That the above is at variance with the one given in paragraph 10 of her Statement on Oath where she stated that she was refused access after making several demands for same. That she did not give evidence of a single demand for access to the said plots to commence development or even state how she was refused or denied access to the plots.

That contrary to the Statement of the Plaintiff that the DWI –MD of the Defendant stated in Chief and confirmed under the cross examination that though the parties agreed to give access to Plaintiff upon payment of 50%, that the Defendant give the Plaintiff access upon payment of 30% deposit not 50% of the agreed price. That the Defendant showed the Plaintiff the 2 plots on the ground to enable her start development.

That the Defendant never agreed to develop the plots for the Plaintiff. That there is nothing in Exhibit 2 that shows any agreement as to development of the plot for the plaintiff. That parties are bound by the agreement they freely entered into. He referred the Court to the case Supreme Court decision in:

Aminu Ishola Investment ltd VS .Afri Bank PLC.

(2013) 1 NWLR (PT 1359)380

He further submitted that going by the written Terms of the Contract between the parties in this case; the Plaintiff has not been able to adduce any evidence of breach of contract by the Defendant since the 2 plots she made part-payment for are still available for her to develop. Again that the plaintiff never complained of any encumbrances on the said plots and she

never also raised any issue that there is an adverse claimant to the said plots.

The Defendant urged the Court to hold that the head claim of the claimant has failed as she has not adduced any credible evidence to support it and as such the Court should dismiss it.

On the Demand for refund of N7.5M part payment made by the Plaintiff the learned Counsel submitted that since the Defendant has established that the Plaintiff head claimed should be dismiss for being unsubstantiated and unmeritorious the issue of refund is bound to also fail. That the Defendant had in paragraph 4-6 of their Writ, Statement on Oath sufficiently demonstrated that the Plaintiff paid a lump deposit of N3Million instead of N4Million as 30% deposit and N500,000 per month on the next 18months to make up N9Million in line with paragraph 3 of the special Terms and conditions Exhibit 9.That the Plaintiff blows hot and cold at the same time demanding a refund of the N7.5M on the ground that the estate was not developed as in her letter Exhibit 10. But she changed that in her Statement of Claim and Writ of Summon that the reason for demanding the refund was because she was not given access to the plots after she had paid. That by that obvious contradiction the Plaintiff is approbatting and reprobating on the same issue. He referred to the case of:

ALARIBE V.OKWUONU

(2006) 1 NWLR (PT1492)41@ 66 para D-E.

He urged the Court to find that the Claim of the Plaintiff on the refund of N7.5M lacks merit and therefore should be dismissed.

On issue of General and Exemplary Damages of N30Million,the Counsel went on submit that General Damages can only accrue from a wrongful act or injury done to a Plaintiff or to a party to a suit. That where there is no wrong or injury committed or suffered by a party or the Plaintiff, the claim of General Damages cannot stand. He referred Court to the case of:

ACB LTD VS APUGO

(2001) 2 S-C 215 @ 229

He submitted that the Plaintiffs claim of N30million as General and Exemplary Damages cannot stand as it has not been shown to flow and

stem from her claim for breach of contract which she has not been able to established; more so when she has not successfully established her claim on breach of contract. She urges the Court to dismiss the claim as it is not established.

On issue of Special Damages of N2.5M for legal fees and consultancy, the Counsel went on to submit that by the Defendant averment in paragraph 16 of the DW1's oath that the engagement of the services of a Legal Practitioner was entirely the business of the Plaintiff not that of the Defendant. That the Defendant is not liable to pay for the legal services of the Plaintiff in which it has had plead **volunti non fit injuria.**

Again that the issue of special damage should flow from the breach of contract and must be reasonably foreseeable and specifically pleaded and that is not the case in this suit as it was never pleaded nor proved by the Plaintiff to be entitled to be paid.

He went on to summit that the Plaintiff has not proved any breach of the contract she voluntarily entered into with the defendant. She had not proved how the N2.5Million was spent or on what it was spent. That Exhibit 6 attached by Plaintiff is not enough as it is only a photocopy of a receipt issued by Plaintiff Counsel stating that N1.5M was paid to him and that there is an outstanding balance of N1Million yet to be paid. That the Exhibit 6 falls short of proof as specially and specifically required to be proved by law. That all parties in a suit engage Counsel of their choice and are and should be responsible to their respective legal services fees.He concluded by summiting that the Plaintiff has not adduced any credible evidence to prove any of her claims and as such it is abundantly clear that the case of the Plaintiff lack merit. He urged the Court to dismiss its entirety the said Suit awarding substantial cost against the Plaintiff for wasting the time of the Court by filling the Vexatious and frivolous case.

Upon receive of the final address filled by the defendant the learned Counsel for the Plaintiff Nwabufo IKechukwu ESQ on the 1/7/19 filed the a 6 page Final Address for the Plaintiff.

In the said final address he raised an issue for determinant which is:

> **"Whether the Plaintiff has established her case on a balance of evidence and is therefore entitled to the Reliefs Claimed".**

He answered the question in the affirmative: That the Plaintiff has proved her entire case in that she engaged in a contract, paid sufficient percentage of the contract sum so as to obtain access as expressly contained in the Letter of Provisional Allocation which is the sole contractual document for the allocation between the parties. But that access was never granted by the Defendant and after oral notification of termination of the contract, the Plaintiff also wrote formally terminating same and demanded for a refund of all monies paid. The Defendant failed to refund, the Plaintiff come to Court seeking the claims. The learned Counsel submitted that all the pleadings of the Plaintiff and all evidence thereto were disproved by the Defendant.

That Defendant failed to rebut or displace the case of the Plaintiff and they admitted several salient facts bulwarking the case of the Plaintiff in there pleading and during cross-examination. That the Plaintiff satisfactory established her case satisfied the burden of proof and shifted same to the Defendant who supposed to adduce evidence to rebut same but failed to do so. He urged that Court take judicial notice of all these evidence and submission elicited by the Plaintiff from the Defendant during the cross examination and resolve them all in the favour of the Plaintiff especially as facts admitted need no further proof. He cited in support the case of:

TAFAMA VS.JALOMI

(2003) ALL FWLR (PT.181) 1682 Ratio 3

Taking the issue in dispute seriatim the learned Counsel submitted that the remaining issue in dispute is that the Defendants claim that Plaintiff's termination of the contract was invalid. That it was solely predicated on a certain phrase as contained in her letter of Demand for refund dated 31/7/17. That there was oral notification of Termination before the letter of Special Terms and Conditions for refund was written, issued and signed on the 7/6/17.before the letter of termination was written on 31/7/17. That the essence of the letter of Termination /Demand for Refund date 31/7/17 was to formerly Counter the new and extra contractual Terms and Conditions of 6/6/17 and not to the sole of fundamental termination of the contract which had already occurred orally and conveyed the principal reason for the termination .which is lack of Access to the designated plots of land allocated to Plaintiff.

That Defendant did not show any evidence confirming that it granted Access over the subject matter or specifically identified same either by a letter of Final Allocation or a survey plan denoting or demarcating the said Plots. He referred the Court to **Section 167 E.A 2011 as amended**.

That contrary to the submission of the Defendants, the Plaintiff's termination of the contract was in Order, valid and proper in that the Defendant breached the fundamental contractual terms of granting Plaintiff access to the purchased plot within the time frame set by the parties in the contract. That since the Defendant committed a breach which went to the root of this Contract, the Plaintiff has a right and is right to terminate the contract and sue for breaches as she has done in this case. He referred the Court to the case of:

OCEANIC BANK INT'L.LTD VS CHITEX INDUSTRIES LTD

(2000) 1 FWLR (PT 4) 678 Ratio 8

ODUSOGA VS RICKETTS

(1997) 7 NWLR (PT511) P.I Ratio 7

BANK OF INDUSTRIES VS INTEGRATED GAS.NIG LTD

(2002) 8 NWLR (PT 613)119.

He submitted and urged the Court to hold that the Plaintiff is therefore entitled to terminate contract ; more so as deeming the termination invalid will allow the Defendant to benefit from its own wrong, negligence and breaches. He referred Court to the case of:

Garba VS Lobi Bank (NIG)LTD

(2003) ALL FWLR (PT.173)106 Ratio 5

That since the Defendant could not rebut or contradict the pleadings of the Plaintiff and her Evidence, he urged the Court to grant all her Reliefs as prayed.

On General Damages he submitted that plaintiff deserves Damages which are firmly and reasonably considered arising naturally from the breach of contract itself. He urged the Court to so hold.

On special damages the learned Counsel submitted and opined that the Plaintiff has an uncontradicted evidence of payment of special damages which is the receipt evidencing part-payment of legal fees to his Counsel for the prosecution of this Suit. That such evidence not contradicted are deeming admitted and need no further proof. He referred the Court to the case of:

CAPPA & D' ALBERTO LTD VS AKINTILO SUPRA.

He submitted that payment of legal fee to retain a Counsel cannot be deemed to be remote or outside the contemplation of the defaulting party, most especially where the Defendant itself employed the service of a lawyer. That since Plaintiff did not resort to self help it is logical and within reasonable contemplation to expect her to resort to profession legal service of an advocate who should be paid their fees for legal services rendered to final conclusion of the matter. He referred to the case of:

OLAGUNYI VS RAJI

(1986) 5 NWLR (PT 42) 408 @ 420

He finally concluded urging the Court to grant all the Reliefs Sought by the Plaintiff as she has comprehensively established and proved her case, in the interest of Justice and therefore dismissed the defence.

COURT

In every jurisdictional clime where there exists a contract whether penned down in paper or deciphered from the action, inaction and conduct and body language of the persons involved, parties are bound by the contract /Agreement they have entered into. More so, when such agreement was voluntarily and freely entered into with joy and happiness. They are so bound that even where the contract does not turn out to benefit them as they expected, they are bound to go along unless where there is a breach of the term and condition especially that goes to the root of the contract agreement. That is summed up in the latin maxim **Pacta suit servanda – parties are bound by the contract /or agreement.**

This has been summoned up in the decision of the Supreme Court in case of:

AMINU ISHOLA INVESTMENT LTD VS AFRIBANK where the Court held that**:**

> **‘‘Parties are bound by the terms of agreement freely entered into by them...”**

Where it is established that there is an existing agreement between parties who appear in a case before a Court of competent jurisdiction the Court is to ascertain whether there is a valid Contract where there is a breach.

It is established there is a breach all the Court does is to join in the chanting of the mantra/chorus that parties are bound by their agreement and by simply giving effect to that agreement freely entered into by the parties and not to make a new agreement for them. That is the decision of the Court in the case of:

> **1. DALEK NIG LTD VS OIL MINERAL PRODUCING AREAS DEV.CONSTRUCTION**
>
> **(2007)7 NWLR (PT.**
>
> **2. AMINU ISHOLA INV.LTD VS AFRIBANK SUPRA**

Again once there exist a valid contract the Court has no power and the wide discretionary power of the court does not extent to the Court having the power to read meaning into the agreement or add or subtract from what the parties have agreed to. Doing so will be improper and illegal. That’s the decision in the case of:

> **DALEK NIG.LTD VS OIL MINERAL PRODUCING AREAS DEVELOPMENT CONSTRUCTION SUPRA @ P.402.**

Again, where there is an Agreement in writing any alternation or variation of the terms of the contract must be done in writing as agreed by the parties thereto. There is no room for unilateral alteration. Any such alteration unilaterally done without the consent and agreement of other party cannot stand. That is the decision of the Court in the case of:

> **F.K.CONSTRUCTION LTD VS NDIC**
>
> **(2013)13 NWLR (PT.1371)393**

Where the court held

"…agreement that seek to vary the original contract agreement must be in writing. Where parties have redeemed their agreement in writing, oral evidence will not be allowed to alter the content of such agreement."

This also applies where the document containing the agreement is clear, direct unequivocal and unambiguous, such vivid and clear document cannot be contradicted by parole evidence and no extrinsic evidence can be admitted to add or alter the content of such document. That is the decision in the case of:

F. K CONSTRUCTION LTD VS NDIC Supra.

Another common mantra usually charted in a suit where allegation of breach of contract is raised is that:

"Whoever asserts must prove such assertion"

not just by mere stating that the fact exists but with credible and cogent evidence in form of oral testimony and exhibit where available. So in an action, the burden of proof lies first squarely on the Plaintiff who has asserted that the defendant has wronged him. That is what the Court decided in the following cases of:

1. UNION BANK V PROF A .O. OZIGI

(1994)3 NWLR (PT.333) 385

2. OKIRI V. IFEAGHA

(2001)ALL FWLR (PT73)140

3. NWEGA V.REGD. TRUSTEE RECREATION CLUB

(2004)FWLR (PT.190)1360

In any case where facts raise are not contradicted, rebutted, challenged or equivocally denied, those facts are deemed by the Court to have been admitted by the party who ought to have contradict same. That has been decided in so many cases in our Court like in following cases:

ADIKE V.OBIARERI (2002) 4 NWLR (PT.758)537

DARAMOLA V.A-G ONDO STATE (2002) ALL FWLR (PT6)997

NBCI V.ALFIJIR MINNING NIG LTD (1993)4 NWLR (PT.287)346

CAPPA D' ALBERTO V.AKINTILO (2003) 9 NWLR (PT824) 49

In any case pending before a Court of competent jurisdiction, the onus is placed on the plaintiff who must satisfy the Court that he has credible and cogent evidence to establish his claim in Order to earn the reliefs Sought. Unless and until the plaintiff does that, the onus will not shift. Where that is the case, it is said that the plaintiff has not been able to establish his claims and therefore the Court cannot grant his reliefs. But where the Plaintiff has satisfactorily discharged the onus with credible and cogent evidence, it is then that the onus can shift to the Defendant who must also adduced evidence to discharge the burden placed on it by the Plaintiff. Where the plaintiff succeeds in doing so and the Defendant fails to shift the onus back to Plaintiff in a rebuttal, it is said that plaintiff has proved its case and the Court is duty-bound to so hold and grant his claims. That is the decision of the Court in the case of:

OLUWU VS OLOWO (1985)3 NWLR (PT13)372 @386.

Where the Defendant fails to shift the onus back to Plaintiff it is said that the Defendant has admitted the fact placed by Plaintiff and facts admitted need no further proof. That is what it's held in the following cases of:

UDE VS A.G RIVER STATE

(2002) 4 NWLR (PT.756)66 AT 782.

BULAMA VS DAGGASH

(2004)14 NWLR (PT892)144

DARAMOLA VS A-G ONDO STATE supra

ELENDU VS EKWUOBA

(1995)3 NWLR (PT.380)704

ADIKE VS OBIARERI supra.

By the provision of **Section 167 EA 2011 as amended** provides that evidence which could be and is not produced would, if produced, be

unfavourable to the person who with holds it**.** That is what the Court held in the case of:

TEWOGBADE VS AKANDE

(1968) NMLR 404

ONWUJIUBA VS OBIENU

(1991)1 NSCC 492

On the root of a contract or something which a contract contemplates or lies on is not complied with by a party thereto, the performance will definitely be affected as such performance will be totally different from what is contemplated in the contract. That is what was decided in the very old English case of:

CHANTER VS HOPKINS (1838)150 ER 1484.

Also a victim in any contract where the other party commits a breach which is fundamental to the root of the contract, has a right to terminate the contract and sue for a breach of the contract. Where that is the case, the victim must be able to establish the breach through his testimonies and evidence adduced with exhibit if any; otherwise his claims will fall like a pack of cards. That is what the Supreme Court decided in the following case of:

OCEANIC BANK VS CHITEX INDUSTRIES LTD

(2002)ALL FWLR (PT.4)678 RATIO 8.

NIG BANK FOR COMMERCE & INDUSTRIES VS INTEGRATED GASES

(2002)8 NWLR (PT.613)119

MANYA VS IDRIS

(2000)ALL FWLR (PT23)1237 RATIO 6

Also where a party to a contract is in breach of the material terms of that contract, the aggrieved party has a leeway and a good reason to refuse

to perform his own side of the obligation under that contract to such an extent that the victim party can treat or regard such a contract as dead, non-existent or extinguished. That is the decision of the Supreme Court in the case of:

BEST NIG LTD VS BLACKWOOD HODGE & 2ORS

(2011)1-2 SC (PT.1)55

Where that is the case the victim party can and is entitled to terminate the contract or where he has done so it is said to be the right thing to do in the circumstance. But such party must have come to Court to establish that fact with credible and cogent evidence; it is not a one-of-the-mill thing. That is the decision of the Court in the case of:

AMBA VS LOBI BANK NIG LTD (2003)ALL FWLR (PT173)106 RATIO 4-5

OLUWO V.ADEWALE (1964) NMLR 17 SC

AJIBADE V.PEDRO (1992)5 NWLR (PT241)257

In a very recent Supreme Court case of:

MUHAMMED VS IGP

(2019)4 NWLR (PT1663)499 @ 518 Para B-6,

The apex Court held:

‘‘The principle guiding the award of damages will flow from the wrong suffered by the complainant. Any grant of general damages is intended to assuage the natural loss and painful material and mental feeling suffered by the claimant and caused by the Defendant. The relief Claimed in such a situation has no mathematical exactitude”.

Per Aka’ahs JSC

Again in the same case the apex Court held that:

“General damages are averred under specific heads of claim presumed in law to be the direct and natural consequences of the wrong complained of and are awarded at large. General Damages are always made as a claim at large. The quantum need not be pleaded or proved

specifically. The award is quantified by what in the opinion of a reasonable person is consider adequate loss or inconvenience which flows naturally, as generally presume by law from the act of the Defendant. It does not depend on the calculation made or figure arrived at from specific items".

MUHAMMAD VS IGP

(2019) 4 NWLR (PT1663) 510-511

See also the case of:

ROCKONH PROPERTY CO. LTD VS NITEL PLC

(2001) 14 NWLR (PT733)468

It had also been held in another Supreme Court case:

FBN PLC VS A-G FEDERATION

(2018) 7 NWLR (PT 1617) 161-162 PARA H-B AND E.

Where the apex court held:

> **''For a party to be entitled to exemplary damage, it is the duty of the party to prove that the action of the other party (defendant) is outrageously reprehensible. Such damages are awarded when a defendant act is fraudulent and grossly reckless. These damages are awarded both as punishment and to set public example. They are awarded to plaintiff for the horrible things he went through. Though often requested, exemplary damages are seldomly awarded".**

In the same case **FBN PLC V.A-G FEDERATION** the Court had also stated at **162 PARA B-D AND P.175 PARA A-C.**

> **"The primary objective of award of damages is to compensate the plaintiff for the harm done to him by the Defendant's (action or inaction or wrong). A possible <u>secondary</u> objective is to punish the defendant for the conduct, such secondary objective archived by awarding in addition to the normal compensatory damages which go by various names to with exemplary damages, punitive**

damage, vindictive damages whenever the conduct or action of the Defendant is sufficiently outrageous to merit a punishment as where it discloses fraud flagrant disregard to terms of contract or disregard to law and order and the like".

It has been established long before now that where no wrong was done by the Defendant that occasioned any suffering of the plaintiff, the claim of general damages will not stand. That is the decision of the Court in case of:

A.C.B LTD VS APUNGO

(2001)2 S.C 215@ 229.

Where the Court held that to be entitled to award of general damages, the plaintiff must successfully establish his claim against the defendant with credible evidence and uncontroverted facts. That's also the decision of the Court in the case:

WILLIAMS VS DAILY TIMES

(1990) 1 NWLR (PT124) I

The essence of awarding cost is to compensate the successful party.

Again, where a party has successfully established breach of contract any damages awarded in respect of such breach of contract is fairly and very reasonably considered as arising according to natural course of things from such breach of contract itself see the case of:

P.Z VS OGEDENGBE

(1972) 1 ALL NLR (PT.I)202@205-206

OKONGWU VS NNPC

(1989) 3 NWLR (PT115)296@307

UMOETUK VS UNION BANK PLC

(2001) ALL FWLR (PT81) 1849 RAT.I.

After all these the Court has this to say can it be said that there is a breach of contract?

Again, in this case, giving the submission of the Plaintiff, her oral testimony, evidence adduced and documents exhibited in support of her case, the submission Of the Defendant, can it be said that there was a breach of contract or that she has been able to establish that there was a breach of the contract in this case by the defendant in that they failed to fulfill the promise made to plaintiff which is allowing her access to the plots having paid over 50% of the price for the 2 plots of land measuring about 1000squre meters. In that she is entitled to her head claims? Or put in another any, has the plaintiff been able to establish her claim so as to be legitimately entitled to the reliefs sought and including award of the general, exemplary and special damages having in mind that special damages must be specifically pleaded and the particular clearly and detailedlly stated to the later?

Or can be said that the Defendant has been able to controvert, rebut and successfully challenged the case of the plaintiff such that she is not entitled to any of the damages claimed as well as her head claims and other reliefs sought?

It is my humbly view that there was no breach of contract. Again the Plaintiff has not been able to establish that there was a breach of contract by the defendant to entitle her to the relief sought.

To start with going by the contract, the price for the plot is N6Million each and not N5Million as the plaintiff want this Court to believe. A closer look at the averment in the PWI Statement on Oath and Statement of Claims the plaintiff paid initial deposit of N3Million and going by the agreement which she also confirmed in her Oath in PARA 5 she agreed to pay N500.000.00 every month for the next 18 months. This means that within 18 months she will pay a total of N9Million which when added to the N3Million already deposited it will come up to a total of N12Million which is the price she had agreed to pay for the 2 plots. That means that each plot cost N6Million and not N5Million as she deceivingly wants the Court to believe.

If the price for the 2 plots is N10Million and she had paid a deposit of N3million why should she agree to pay N9million over the next 18months at N500.000.00 every month, instead of paying the said N500.000.00 for next 14 months to make up for the outstanding balance of N7Million?The plaintiff know ab initio that the price of the 2 plots is –N12Million and not

N10Million.This Court does not believe her story and submission in that regard.

In the Agreement it is clearly written thus:

CONDITION NO 3:

"A monthly deposit for Five Hundred Thousand naira only (N500, 000.00), would be made on these allocation over a period of eighteen months, following deposit of 30%''.

Again the plaintiff was supposed to provide a deposit of 30% of the sum before the payment of the N500.000.00 monthly pay. So going by terms of the contract, since the amount or price of the plot is N12Million the plaintiff is suppose to pay N3.6Million being 30% of N12Million.But she paid only N3Million as initial deposit. That is N600, 000.00 short of the actual amount she supposed to pay going by the terms in the provisional allocation letter- **Exhibit I**. That being the case the plaintiff was in breach of the terms of the agreement instead. That is why this Court hold that defendant did not breach the contract as plaintiff alleged.

Also of interest is the terms and condition No which states:

> **''Access to plots would be given after the payment of 50% deposit has been made''.**

The above means that once the Plaintiff had deposited 50% of the total sum of the plot the person will have access or be given access to the plot. That means unless and until such payment of 50% deposit is made the defendant cannot give any buyer including plaintiff access to the plot.

But in this case notwithstanding the said condition the plaintiff who is lettered enough did not at any time request for the Defendant to give her access to the land. At no time was even access denied by the Defendant as the plaintiff wants the count to believe.

This access to the Res after payment of 50% is automatic for anyone who makes an initial deposit of 50% of the price of the plot of land. The Plaintiff knows it because that is a condition in the agreement. That being the case the Defendant never denied the Plaintiff access to her plot. The plaintiff never asked for access and the Defendant never denied her access.

It is imperative to point out that in land matter document and documentary evidence is paramount and key. Because documents speak louder than the voice of human.

To start with, the Plaintiff who now raises the issue of denial of access had in one of her numerous chats with one Beatrice, the DW2, Stated in the chat of 3/8/16 at 9.44pm thus:

‘‘My mum was wondering if you could pick her up to take her to the site this Saturday.”

And the reply was **‘‘I will’’**

Again on 3/5/16 about 2 weeks after she signed the agreement and accept the terms and conditions of the offer provisional letter to allocation and 11 days after she deposited the N3Million,the Beatrice in a chart at 10.14am said:

> **‘‘Good morning Heidi,**
>
> **“...the time for todays site inspection has not been communicated to me please confirm time.”**

The above speaks for itself. So also the above confirms that there was never a time the defendant denied the plaintiff access to the plot as she claims.

Again going by the extensive charting with the DW2 which was exhibited in the cause of their testimony shows that the plaintiff has such a very busy work schedule that she could hardly have time to even visit the site and have access. That must have been why she suggested her mother sees the place instead. If her mum could be given access by the Defendant to visit the site, can the same defendant deny the plaintiff access to the plot she had made some payment for? Of course not the Defendant did not breach the contract on that ground. So this Court holds.

Again there is nothing in this agreement to show that the defendants are to develop the land for the plaintiff. So one wonders how the plaintiff came about the issue of developing the estate since the defendant never agreed

to develop her plots of land for her. Developing the Plot is not part of the agreement as the Plaintiff stated in her letter.

''...your company has for over one (1) year failed, refused and or neglected to develop the estate and it appears you do not have any plans in place to commence development in the said estate"

Developing the estate was never part of the contract of provisional allocation of land to build 4 Bedroom semi-detached Bungalow. It cannot also be a condition to terminate the contract as the plaintiff is planning or claiming to do. Parties are bound by the terms of the contract they entered into. Again no party can add or subtract from such terms without the consent, and consensus of the other party. Moreover where there is plan to add or subtract, to terms of Contract Agreement it must be penned down in paper and not orally as the plaintiff is trying to do in this case. Such act is improper and illegal and grossly misleading. The N3Million paid by the Plaintiff is not the 30% deposit. A look at receipt number 0126 dated 17/5/2016, the description therein is this:-

> **''Being initial deposit for 2 plots of land at seasons homes estate Maitama Alieiro FCT (500sqm) each total (1000sqm)''.**

It is clear that by the description, the said N3Million was never the 30% deposit required as contained in the special Terms and conditions on the provisional letter of Allocation.

So from all indications the plaintiff did not fulfil the condition of making initial Deposit of 30% before paying the N500,000 monthly payment.

In the clause No 4, it states:

"…Following the initial deposit of 30%".

Meanwhile in the Exhibit I the plaintiff had stated in the column for:

"Acceptance of Offer"

"I have read through the offer and hereby accept the terms and condition therein".

She signed the acceptance and dated it 17/05/16

But even before then she had at the time of completion of the Allocation Form attached by the Defendant and marked as Exhibit D1, also stated that she had read and agreed to be bound by the terms and condition of the application for the Allocation. She appended her signature and dated same.

The Plaintiff had claimed among other things for the refund of all the monies –N7.5Million she had so far paid to the Defendant.

The Defendants have in their defence stated that those monies cannot be refunded since it was not their fault that the Plaintiff wants to terminate the contract and that the monies can only be refunded if another buyer takes up the said plots. She had challenged the letter written/document sent to her by the Defendant which is the special terms and conditions for termination of investment with the Defendant.

It is important to point out that even in all the receipts issued to Plaintiff by the Defendant receipt NO 0126 of 17/5/16, 0025 of 22/7/16, 0066 of 31/8/16, 0043 of 31/10/16, 0148 of 24/11/16, 0074 of 28/2/17,

It was boldly written or marked with this word:

“No refund of money after payment”

Again, none of the receipts shows payment of 30% initial Deposit. Again none of the amount contained in any of the receipts shows the total amount of money that is equivalent of the 30% initial deposit.

On the oral termination of the contract of sale of land, it is absurb that a contract which was entered into from the initial filling of form to the issuing of provisional allocation letter, its acceptance and subsequent payment of money for the plot of land, were all done in writing. All payment made by the Plaintiffs were receipted. The same Plaintiff, who had agreed ab initio to have read, understood and accepted the terms and conditions from the time of the completion of the application form to the time of acceptance of the offer, decided to terminate the whole transaction by oral communication. Apart from the fact that it is legally unethical, this Court finds it very difficult to believe that there was such oral communication. And where there was one it is not the proper way to communicate a termination in a transaction predicted on sale of land where documentary

evidence is very paramount, more so where the whole contract was in writing.

Even the purported letter of 31/7/17- **"Letter of demand"** was not even signed by the Plaintiff. Again the document Special Terms and condition for termination of investment was not specifically directed to the Plaintiff. It was not addressed personally to her either. From its look and content, it is the company policy document open to all their clients. It is not uncommon and not surprising that a company like the Defendant which is into extensive estate development and realtor should have policy on refund of fund after payment. Moreover, in most estate development companies the refund policy is normally spelt out and can only happen where it is the fault of the company and not that of their client. Mostly where the fault is that of the client such companies never refund the money. The Plaintiff cannot say she was not privy to the existence of that document which was dated 7/6/17 over a month and 3 weeks before her letter of 31/7/17.

Going by the conversation of the Plaintiff and DW2 as contained in the print out tendered on the 1/6/17 the DW2 had asked the Plaintiff: **"Hello Heidi what time is appropriate for us to meet today?''**

On 6/6/17 the plaintiff had told Beatrice:

"Please I would like to see you tomorrow. I am available from 10am-12pm.''

There is no where the Plaintiff had voice her intension to terminate the contract orally with the DW2.

Again from all indications there is nothing in the tone of the chat that shows that there is any displeasure with the Defendant or their agent to suggest or warrant oral termination of the contract of sale of land.

From all the above the Defendant did not fail to hand over the said plot rather the plaintiff for reason only known to her decided to renege on the contract which she had freely entered into by having a change of mind about the transaction which she has entered. There was no breach of contract on the part of the Defendant because they played the game by the rules and followed the terms of the contract. But the Plaintiff did not fulfil

her obligation under the contract she was the one in breach. So her claim No. 1 fails and is therefore dismissed. That is the view of this Court.

Again if the letter on terms and condition of termination was meant for her and that it was on that strength that she wrote the letter of 31/7/19 how come the Plaintiff did not state that her reason for termination was because the Defendant failed to allow her access to the plots. That allegation is an afterthought. Again the title of the letter of 31/7/6/17 is quite different from the content of the letter of 7/6/17. It is likely that the said document of 7/6/17 was already in the custody of the Plaintiff long before the date that was affixed to the document. Again the managing director of the Defendant does not have the habit of affixing a date after signing his signature in a document. Again a closer look at the handwriting and dating pattern in the said document shows it is similar to the writing of the Plaintiff rather than that of the managing director of the Defendant.

It is clear that the Defendant are still willing as ever to give the Plaintiff access to the plot but the Plaintiff is not ready. It is also clear that the DWI and DW2 had stated that the said plots are still unoccupied or re-allocated yet the Plaintiff is raising issue of refund and lack of Access as breach of contract where there is no breach at all. For a reason best known to the Plaintiff she decided to back out of the contract. Since it is not the fault of the Defendant and they are still ready and willing to give the Plaintiff access, this Court cannot therefore Order any refund of money to the Plaintiff because she is bound by the terms of the contract, and the condition for termination of such contract can only be in accordance with company policy.

The Plaintiff has not been able to establish any breach of contract. She has not also established that she is entitled to any of her claims, so also the General and Exemplary Damages. The special damages cannot equally stand because it was not plead and even if it was pleaded the Plaintiff did not give the particulars as required by law. So since the Plaintiff could not discharge the onus on her. That means that her case lacks merit and not established it remains with her.

This Court therefore Order that the Defendant can only refund the money to the Plaintiff on the condition as set out in the Company policy. So the option open to the Plaintiff is either to cancel the quest to terminate the contract, then complete the payment and have her plot or get a refund on the terms as set out in the company policy as contained in the Document dated 7/6/17 which this Court believed the Plaintiff was aware of long before the 31/7/17.

This suit lack merit. It is therefore dismissed.

This is the Judgment of the Court delivered today----------day of---------- ---------- 2019, by me.

K.N. OGBONNAYA

HON. JUDGE

IN THE HIGH COURT OF JUSTICE OF F.C.T

IN THE ABUJA JUDIAL DIVISION

HOLDEN AT KUBUWA, ABUJA

ON TUSDAY, THE 29ST DAY OF JUNE,2019.

BEFORE HIS LORDSHIP:HON.JUSTICE K.N.OGBONNAYA

JUDGE

SUIT NO.FCT/HC/CV/0833/18

BETWEEN

MRS DADA JOY — **PLAINTIFF**

AND

LEADERSHIP GROUP LTD — **DEFENDANT**

RULLING/JUDGMENT

In this writ of Summon,this Court had on the 7/5/18 upheld the Preliminary Objection by striking out the name of the 2nd Defendant Sam Den Isaiah from the suit on the 2nd Defendant. That meant that it is only the leadership Group limited that is the only Defendant on this suit.

In the suit the Plaintiff Mrs. Dada Joy filed this claiming the following against the Defendant leadership group limited.

1. The sum of #36,290,536.00 only being indebtedness arising from supply of several metric tonnes of newsprint supplied to the Defendant.
2. 30% interest on the said sum commerce from the 23/9/19 when Plaintiff issued a sale invoice receipt demanding the said cumulative outstanding sum till Judgement is delivered
3. 10% interest per annul on the Judgement sum from date of Judgement till final liquidation
4. Cost of the suit amount to #2.5m only.

The Plaintiff supports the writ with Affidavits of 18 paragraphs. She also attached document-8 in all marked as EXHIBIT MS1-7. She deposed to the Affidavits in person EXHIBIT MS 1 AND 2 are cheques issued to the Plaintiff by the Defendant which were returned unpaid probably because of insufficient fund their at a time. MS 3 was a letter from Defendant dated 28/4/14 titled Repayment Proposal on your out standing balance

That is at 23/9/17 the outstanding balance as agreed by the parties and as contained in the invoice /Receipt was #36,290,536.00. The said invoice attached on EXHIBIT 4.she also attached a letter for demand from her solicitor MUNICIPAL SOLICITORS dated 14/12/17 marked as MS 5. She wrote another letter to the Defendant dated 15/1/15 marked a MS 6. She equally attached payment receipt for the legal fees paid to her solicitor for their legal services rendered total #2.5m. The said receipt is dated 14/12/17.

The Plaintiff believes that the Defendant has no prima facie defence to his case. She equally file a writing address in support which she adopted as her legal argument in supporting his writ. In the said writing address he raised one issue for determination

> Whether or not from the Plaintiff Affidavit Evidence in juscta position the exhibits attached, this suit can properly be determined under the undefended list

Her counsel on her behalf submitted that the whole issue of the undefended list procedure is to allow the Plaintiff claimant to obtain quick Judgement in respect of the debt or liquidated money /sum where the facts are clear and there is no genuine defence to the claim of the Plaintiff by the Defendant. Refered Court to case of True Grade Engr.ltd vs lead Bank plc (2005)ALL FWLR(PT 409)451 @ 473 PARAGRAH B-D

> 2.OBITUDE V ONYESUM ……..BANK LTD (2014) 36 WRIT 1 AT 38 clear she submitted that the plaintiff is liquidated money demand of N36,290,536.00……. is a debtard liquidated sum of money that he clear to 10% interest is equally in order and has been judicially recognised. she relied on one RANGE SHUNI LOCAL GOVT COUNCIL V STEVEN OKONKWO (2008) ALL FWUR (P7415) 1757AT 1772 (1780-1781)
>
> That by virtue of ORDER 39 R 7 FC 7 +1C +(RULE 2004 AS AT WHERE THE WRIT WAS FILED)……. Award of interest of 10% on a Judgment sum.

He went on to submit that juxtaposing the above decided cases to the plaintiff in his affidavit in support of the suit luridly demonstrated that his case can be effectively placed and fully determined list.

They contended that her clam of the said sum in issued is a liquidated money demand or sum that is that is as certain in arithmetical calculations. they undefended in the processed way is to ensure quick justice to the plaintiff where the facts of the case are not in dispute and defendant has no prima facie . He urged the court to grant all her reliefs because her suit is meritorious

Because the claim is predicated on debt /liquidated money demand the application applied that the writ be marked and placed under undefended list. This court did that and so ordered.

Upon service of the writ on the defendant on 30th/4/18 the first filled they noticed of intention to defend the suit of the ……sit was marked UNDEFENDED as it is statutorily required.

The defendant supported the notice of intention to defend with an affidavit of 11

Deposed to by Ibrahim Abdulahim they attached 3 bank tellers marked as exhibit L1 – L3 show various amount paid in to the plaintiff account totally N450,000 .in the written address which they adopted in support of the said notice to defend, they raised one issue for determination which is "WHETHER THE DEFENDANTS AFFIDAFID HAS DISCLOSED A DEFENCE ON THE MERIT".

The defendant stated that the amount outstanding and due to plaintiff is less than the amount claimed have paid N450,000 to her by the deposit they made to her which the Plaintiff received but did not reflect or capture in the amount she claims as debt to her. That for a suit to succeed and marked as undefended list it before debt a liquidated money demand for an unliquidated sum that cannot be ascertained as at the time the action was instituted. that unliquided debt is undefended list procedure require the sum to be received to be clear out debt for which there is incontestable proof against the Defendant to which the Defendant must have no defence. He acted in support the case of RES SETRACO NIG. LTD VS HILDETINA GLOBAL LTD (2017) ALL FWRL(PT 781)1258 that for suit under undefended list to succeed the whole claim must be qualified to be heard under undefended list of the suit, where there is any defect should be transferred to the general cause list

That where a Plaintiff claims interest in a suit marked under undefended list, the Plaintiff has to establish how such interest accrued. He relied on the case L.O YEMOS NIG. LTD VS UNITY BANK PLC (2017) ALL FWLR (PT873) 1653@ 1670. That the Plaintiff should state in his account in support how the interest accrued and how the rate was arrived at. That the Plaintiff in the present case did not fulfil any of the above condition in her affidavits in support of this claim that interest has to be proved and assessed. That since this matter is placed under undefended the Court has no Juris to entertain same. That this Court cannot expand its Juris by assessing the interest claim by the Plaintiff since the undefended list procedure is available for speedy judgement on a liquidate money demand where the Defendant has no prima facie defence in the suit.

That the only 2 legal ways where by a claim of interest may arise are as of right as agreed by parties or as provided under the statute. That where it is as of right the proper thing to do is to claim entitlement to it on the writ, pleading the feint showing entitlement to the interest with credible and very tangible and material Evidence in support of the interest so claimed he cited in support

1. ECHLCEN (NIG) LTD VS UBA PLC (2017) ALL FWLR (PT901)581@ 613

2. DASOFUJO VS AJIBOYE (2017) FWLR (PT911)508@ 534

That Plaintiff did not proffer any tangible Evidence in support of her claim for interest on the sum claimed. That she does not have any agreement on interest which the Defendant that it is not enough to say she obtained a facility from her bank. That she did not show Evidence of the facility and the interest agreed upon or changed by the bank on the said facility. He also refer Court to the case of UBA VS JARAGABA (2017) MJSC 113@ 122. Where the Court hold that for a matter to be transferred from undefended to cause list .the Defendant must disclose facts that will require the Plaintiff to proffer explanation for certain matter with regard to his claim to show that there is a dispute to be tried.

They submitted that Plaintiff claiming interest in this suit under the undefended list robs the Court of the requisite Juris to determine the matter under the undefended list that sum she claim interest the should be transferred to the general cause list .that one a sum in interest is to be contrided with the liquidated sum or debt, the claim of the Plaintiff cases to be a sum certain. It equally ceases to be liquidated amount demanded and must be a matter to be resolve under the general cause list. He cited FORTURE BANK VS CITY EXPBANK (2012)14 NWLR(PT1319)112.

On the issue of legal fee of #2.5m where the Court hold that until legal fee was previously agreed upon on a particular sum owned as debt or so claimed, such a legal fee cannot be claimed in a wint marked or branch under undefended list procedure.

They urged Court to transfer this suit to the general cause list to satisfy the condition applicable for the suit to be retained under the undefended list.

In any suit marked undefended, it is the belief of the Plaintiff that the Defendant has no Prima facie determine to the case of the Plaintiff. The Plaintiff in such case urges Court to enter Judgement in its favour. In undefended list proceeding the Plaintiff must show with credible Evidence and strong material Evidence and superior against that she has a very strong and air tight case to which the is no defence on merit by Defendant .once a defendant file any Defendant as the defendant has done in this case, the Court will listen. the Court has the power to even transfer a case marked undefended to the general cause list. This means that the Court can sue motion do so all in the interest of justice of the case.

Before a Court can taken any decision to enter or removing a case from a undefended to general cause list ,it is incumbent on the Court to scrutinize the claim of the Plaintiff and evaluate the Evidence in term

of exhibit. This the Court does by looking critically at the facts in support of the claims and exhibit attach. Where the Defendant feels it has a Prima facie defence, it must file a notice of interest to defend the wint, and Affidavit of facts in support of the said intension to defend attaching any Exhibit and filing writing address when it will canvass its legal argument in support.

Once that's the case the Court has a duty to scrutinize the facts in the Exhibit to see if actually the Defendant has any defence on merit.

Where the Court feels there is a Defendant on merit ,it will transfer the case to general cause list and ask the parties to file and exchange their pleadings' otherwise it will hold that the Defendant has no defence and enter judgement in favour of the Plaintiff by referring the suit under the general cause list. For any claim to qualify to be heard under the undefended it must be a debt owned to the Plaintiff which is a specified amount which the Plaintiff claiming and which is not contestable and Plaintiff must show that the Defendant has no defence to the said claim. the sum of money involved must be known , specified and there must be facts to support that ,it exists and that it is a debt owned to the Plaintiff by the defendant for her work done or service rendered. The Plaintiff must be ready with her fact and Evidence to show the amount of the debt, spell out what brought about the debt and show that there has been several demand made to the Defendant to pay the said sum which he owes

SETRACO NIG.LTD VS HILDEFINA GLOBAL RESOURCE LTD (2017) ALL FWLR (PT871) 1258

Undefended list procedure is time serving and makes for quick recovery of debt owed to the Plaintiff after several demand made and to which the Defendant cannot deny and has no defence to for a wint to be qualified to be heard under undefended list procedure, there must be the debt in form of the exact sum being owned to Plaintiff and there must be facts set out in the Affidavit show the ground upon which the sum is being owned .starting that the believe of the Defendant the Defendant has no defence therefore in undefended list proceeding the claim must be for a sum must be liquidated, specified, known, demanded by Plaintiff against the Defendant as opposed to claim for damages which must be assessed by a Court or Jury .it is usually a debt and or specific amount of money due and payable to Plaintiff .The amount must be ascertained without further investigation as what the exact amount is. The amount must be arithmetically clear and ascertained even where some amount has been paid in the cause of the tendency of the suit before it was heard, once the parties are able to stated the exact amount still outstanding in the balance the count will one it can be ascertained deliberate on it and referred the suit under the undefended list but where there is any disparity in the amount claimed or left as balance ,the Court will transfer the case to the general cause list and allow the parties to exchange their pleadings and call Evidence in a full hearing. So where a party has filed a claim for a given sum and the Defendant pays some amount as part of the claim Before the Court hears the matter, the Court can deduct the amount paid ones it is not in debt from the original amount claimed and the remainder is the claim Court will determine.

It is not must that one a Plaintiff has claimed an amount in the Writ and defendant make any payment after the filing of the Writ but before it files Notice to defendant that the Court must transfer the suit to general cause list, it is at the discretion of the Court after due condition of the statement of all the parties to retain or transfer a case as the case may be.

Again, ones there is Evidence to show in the transaction of the parties that where money owned should attract interest, the Court will listen.

Again where there is evidence to show that legal fees are paid for the purpose of helping a Plaintiff or party for the legal services rendered in serving prosecuting a matter under undefended list ,the Court may consider that to see if it is really worth it having in mind that all the parties must have mind layers to do their respective legal works in that regard. See the case of DANGE SHUNI LG COUNSEL VS STEPHEN OKONKWO (2008) ALL FWLR 9PT4150 1757@ 1780 TO 1781. Interest----------at the discretion of the Court unless it is stately provided or continued in the terms of contract between Parties.

The provision of the rules of this Court is that Court may award interest on any of its judgement or order within a given or specified at a rate of not more 10%. This applies more to the Judgement the Court where damages are claimed and award and not on a Judgement under undefended list procedure per say. Evidence under Judgement bearded on undefended list procedure the Court can award interest as it deem fit. All bowl down to exercise of Court discretion. That in why the Word "May'' is used in the said **ORDER 39 R 7 OF THE OLD HIGH COURT RULES 2004.**

After all these, the question is, should the Court retain this Writ under undefended list procedure determine the issue before the parties and enter judgement for the Plaintiff? or should this Court transfer this case to the general cause list as the Defendant are canvassing in that the Defendant has a Prima facie defence ground to the fact that they did not deny owing the amount and had paid #2,450,000 after the Writ was served but because they entered appearance and filed the Notice to defend. but before the said notice to defend was heard. More so because the Plaintiff is urging the Court to also pay 30% of the amount undeniably owed by Defendant as well as #2.5m as legal fee to the Plaintiff counsel for his legal services. Put differently has the Plaintiff establish his case that it should be retained under the undefended cause list and has the Defendant Affidavits disclosed Prima facie defence on merit.

It is my considered view that justice will be better dispensed within if this matter is retained under the undefended list since the Defendant are not denying that they are owing the plaintiff the said amount which is now #33,740,536.00 as against the original claim of #36,290,536.00 only . it is the Plaintiff who brought a claim to the Court that tells Court how much the claim is. The Plaintiff in this case on the day the application was moved informed Court that the Defendant had paid them #2.4m after they had filed the suit. The Defendant did not deny that they did not equally demand that the outstanding balance of what they owed is the sum of #33,740,536.00. Since the Defendant did not deny this amount the sum

owed stands unchallenged. That is why the Court holds that, this matter be retained under the undefended list procedure.

It is not in doubt that money owed should attract some interest. The provision of the rules Court at the time this suit was filed **ORDER 39 R 7 HIGH COURT 200**4 provides that Judgement sum should attract some interest not exceeding 10%. This places it in the laps of the Court to determine the amount payable as interest in the case. There is nothing before the Court to show that as at the time the parties entered into the contract that ----------into this debt that the Defendant should pay interest on the outstanding balance of the debt owed by them. Yes the plaintiff alleged that she took or obtained some facilities from the bank. She did not tell the court the amount she obtained the interest rate charge or even name of the bank. That fact is unsubstantiated and was speculative. All in all it is imperative that such an amount owed which is not denied should naturally attract interest no matter how minimal. Again the said interest should not be what the Court will hold on to say that this matter is clearly predicated on debt sum liquidated which defendant does not deny owing, should be transferred to general cause list. It is the view of the Court that this case be retained and is hereby RETAINED in under undefended list procedure.

That being the case this Court has the right to determine the issues there on and has determined the issue between the parties and there are hold, that after the due and in depth consideration of the issues before the parties and the facts evaluation of the Evidence exhibits attach and the weighing of their legal arguments for and against this matter, that the Plaintiff has been able to establish her case and that the defendant has not been able to show that it has a prima facie defence on merit. Therefore, this Court hold that the Defendant has no defence on merit to the suit of the Plaintiff, the Plaintiff is therefore entitled to the Judgement of this Court being entered in its favour.

This Court therefore grant the reliefs of the Plaintiff to writ:.

1. The Defendant is hereby bordered to pay to the Plaintiff the sum of #33,740,536.00 being the outstanding balance of the money owed to Plaintiff for the supplied of several tonnes of newsprint she supplied to the Defendant(leadership Group limited)

   2.5% interest on the sound Judgement sum to be pay from the day of this Judgement until the said Judgement sum is fully liquidated.

   As to the cost of legal fees, all parties should bear their respective cost of the litigation.

   This is the Judgement of this Court delivered today 29TH DAY OF JUNE 2019

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HON.JUSTICE K.N. OGBONNAYA

JUDGE, FCT HIGH COURT