

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION
HOLDEN AT JABI FCT ABUJA
SUIT NO: FCT/HC/CV/3064/2018

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN
BETWEEN:

IFEOMA OKECHUKWU.....PLAINTIFF

AND

CHUKWUDI UKODEFENDANT

Appearances:

Ifeanyi Chukwu Esq appeared for the defendant.

JUDGMENT

By the writ of summons brought under undefended list procedure whereof the claimant claims:

- 1) an order of this Honourable Court mandating the defendant to pay back to the plaintiff the sum of N1,800,000= (One Million, Eight Hundred Thousand Naira) only being the sum paid as part payment for Plot 506, Kubwa Extension 3B, Abuja on the 20th day of December, 2017;
- 2) an order mandating the defendant to pay the plaintiff the sum of N9,500,000= (Nine Million, Five Hundred Thousand as exemplary damages and punitive cost;
- 3) The sum of N500,000= (Five Hundred Thousand Naira) only as the cost of the proceedings.

The writ is supported by twelve paragraphed affidavit deposed to by one Mrs Ifeoma Okechukwu, being the plaintiff in this suit.

Attached to the writ are the following documents:

- 1) Conveyance of provisional Approval granted to Akin Adewis: dated the 15th May, 2001.
- 2) Acknowledgment of receipt of the sum of N1,000,000= made by the defendant;

3) Letter of Demand made by the solicitors of the plaintiff for the payment of the sum of N1,800,000=

The defendant was granted leave to file his notice of intention to defend the action, and consequent upon that he filed his notice of intention to defend the action dated the 10th day of April, 2019 out of time. The notice was accompanied by twenty three paragraphed affidavit deposed to by Chief Chukwudi Nweke.

Attached to the affidavit is one document, that is the acknowledgment of receipt of the sum of N1,000,000= made by him.

It is in the affidavit of the plaintiff that sometime in 2017 the defendant approached her with the intention of selling a Plot of land to her located at plot 506, Kubwa Extension 3B, Abuja at the rate of N3,500,000= and she has paid the sum of N1,800,000= as part payment for the said land on the 20th of December, 2017.

It is stated that the defendant issued to the plaintiff a conveyance of provisional approval and the plaintiff discovered that the conveyance of provisional approval was forged, and she instructed her solicitor to write a letter demanding the money from the defendant in the sum of N1,800,000=, and despite every effort made by the plaintiff to recover the money, it yielded no fruit, and this put her through a lot of financial damage, and the plaintiff believes that the defendant has no defence to the claim.

It also stated in the affidavit accompanying notice of intention to defend of the defendant that the plaintiff in company of one Mr. Christian approached the defendant indicating her interest to purchase a plot of land situate at plot 506, Kubwa Extension 111 B, Layout, Kubwa Abuja measuring about 600m and that he is the beneficial owner of the said plot and has been in peaceful and effective possession of the said plot and he entered into an agreement with the plaintiff and one Mr. Christian in the year 2017, and the agreed value of the land is in the sum of N3,500,000= only and it was further agreed that the money could be paid instalmentally.

It is in the affidavit that the plaintiff paid to the defendant the sum of N1,800,000= (One Million, Eight Hundred Thousand Naira) only and he acknowledged the receipt of same, and the balance of N1,700,000= (One Million, Seven Hundred Thousand) only was to be

paid on or before the 31st day of January, 2018, and that a conveyance of provisional approval was given to the plaintiff by the defendant.

It is further stated that the original title documents of the land are in possession of the defendant and are genuine and not forged.

It is also stated that the agreement was between the defendant, the plaintiff and one other person, and that other person has to be joined as a party in this suit.

It is also stated that the claim is not a liquidated money demand but rather for a breach of contract of sale on the part of the plaintiff when the plot of land has not been invalidated by any court.

The defendant has filed along with the notice of intention to defend a written address. To my mind, I need not to go through the address as this is not envisaged by the Rules of this court under the undefended list procedure, and it is hereby Jettisoned. See the case of **Aso Motel Kaduna Ltd v. Deyeno (2007) All FWLR (pt 390) p. 1452 at 1474 paras. A – G**. See also Order 35 of the Rules of this court 2018.

Thus, it was held by Court of Appeal, Kaduna Division in the case of **Kabiru v. Ibrahim (2005) All FWLR (pt 240) p. 99 at pp. 115 – 116 paras A-B** that a proceeding brought under the undefended list procedure is not exempted or insulated from the main requirements of every Civil Proceedings especially that on the burden of proof and the need for the plaintiff to disclose it by establishing a prima facie case before the defendant will be called upon for his defence. In view of this principle, it would not be proper to begin an undefended case by considering the defendant's notice of intention to defend as that will amount to casting or making a burden of proof on the said defendant instead of on the plaintiff. In the instant case, it is the duty of this court to consider the affidavits of both parties with a view to see whether the plaintiff has established a prima facie case against the defendant for this court to enter judgment in favour of the plaintiff.

The plaintiff in the affidavit in support of the writ stated that she has paid the sum of N1,800,000= to the defendant as part payment in respect of the purchase of plot of land situate at plot 506, Kubwa Extension 3 B, Abuja on the 20th day of December, 2017. The

defendant in his affidavit in support of the notice of intention to defend admitted to the fact that the sum of N1,800,000= was paid to him for the purchase of said land, and to this, it could be inferred that the defendant is not denying the claim of the sum of N1,800,000=.

It also in the affidavit of the plaintiff that she disclosed that the conveyance of Provisional Approval given to her by the defendant is forged, while the defendant stated in his affidavit that he is still in possession of the title documents and they are genuine and not forged. By this, it could be inferred that the transaction has not been concluded between the parties as no deed was executed until the final payment.

It is also in the affidavit in support of the notice of intention to defend that the plaintiff's failure to pay the balance amount to breach of contract of sale of land because the plaintiff failed to pay the balance of N1,700,000=, and by this it could be inferred that the defendant makes this as a defence to his claim even though admitted to the claim of N1,800,000=.

It is also in the affidavit of the defendant in support of the notice of intention to defend that the agreement was entered between the defendant, the plaintiff and one other person, to him, that other person ought to be joined as a party. These are part of the defence to his action.

It was held by the Court of Appeal in the above quoted case of **Aso Motel Kaduna Ltd v. Deyeno (supra)** that the defence on the merit are facts which if proved, could exonerate the defendant from the plaintiff's claim. The defendant is required to set up a defence against the plaintiff's claim and not to make up fresh suit as cause of action against the plaintiff. In the instant case, by the defendant stating that the plaintiff is in breach of the contract of sale of land between them, it could be inferred that the defendant makes up a fresh suit against the plaintiff, and this cannot be considered as a defence on the merit, and to this, I therefore so hold.

In the present circumstances, and that the fact that the defendant admits liability that the plaintiff has paid the sum of N1,800,000=, this court has to proceed and give judgment in favour of the plaintiff without much ado.

The defendant is hereby found liable to the sum of N1,800,000= payable to the plaintiff.

The defendant should pay to the plaintiff the sum of N1,800,000= within the period of two weeks from the date of this judgment.

On the relief of the claim of N9,500,000= made by the plaintiff as exemplary and punitive cost, I am of the considered view that this does not have feature to qualify it as a liquidated money demand for it to be entered under the undefended list procedure as this because this court has to hear evidence to establish such a claim. See the case of **Gambo v. Ikechukwu (2012) All FWLR (pt 605) p. 227 at pp. 229 – 230 paras. G – H** which the Supreme Court held that the portion of the case, in regards to such type of claim, can only be met by sending it or by placing under the general cause list. In the circumstances, this relief cannot be determined without resort to an extrinsic accounting, source, and therefore cannot be determined under this procedure. See **A.S.V. Fed Polytechnic Offa v. UBA Plc (2014) All FWLR (pt 748) p. 893 at pp. 916 paras. H – A.**

On the third relief of the claim of N500,000= as cost of the proceedings, this also is not a claim that can be made under this procedure as it is not a liquidated money demand, this is because evidence has to be adduced in proving such a claim, as no receipts indicating payment of the cost whether cost fee for filing of process or lawyer's fee, and there is no consensus among the parties in that behalf. See the case of **Federal Polytechnic Offa v. UBA Plc (2014) All FWLR (pt 737) p. 748.**

I therefore so hold that the second and third reliefs are not those that would come under this procedure.

Signed
Hon. Judge

21/11/2019