

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT HIGH COURT MAITAMA –ABUJA**

**BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE**

**COURT CLERKS: JAMILA OMEKE & ORS**  
**COURT NUMBER: HIGH COURT NO. 34**  
**CASE NUMBER: SUIT NO. FCT/HC/CV/1758/19**  
**DATE: 10<sup>TH</sup> OCTOBER, 2019**

**BETWEEN:**

**JENEW NIGERIA LTD & 1 OR.....PLAINTIFFS/APPLICANTS**

**AND**

**OGECHI NWACHUKWU.....DEFENDANT**

**APPEARANCE**

D. C. Nwagbara Esq for the Claimant.

**JUDGMENT**

The claimants filed this suit on the 29/4/19 under the undefended list claiming against the defendant as follows:-

- (1) The Sum of 9,063,000.00 (nine million, sixty three thousand Naira) only, being the outstanding balance of the increased allocation fee by the defendant to the plaintiff in respect of the purchase of plot 171, jenew Homes, plot 3, cadastral Zone, D02, South District, Abuja.
- (2) Cost of Action

- (3) The statutory interest rate of 10% per annum on the judgment Sum from the date of judgment until the judgment sum is fully liquidated.

The writ which was issued by D. C. Nwagbara Esq, solicitor to the claimant is also supported by an affidavit of 20 paragraphs deposed to by one Olushola O. Olayinka, secretary of the 1<sup>st</sup> claimant in this suit. Attached to the Affidavit are some exhibits marked as exhibits JNL 1, JNL 2, JNL 2A and JNL 3 respectively.

The matter was slated for hearing on 9/10/19. Records of the court show proof of service on the defendants, through substituted service by pasting dated 9<sup>th</sup> September, 2019. Court order was made on 26/6/2019.

The defendant in this suit despite being served by substituted service has failed or neglected to file any processes showing intention to defend the suit as required by law. On this I refer to order 35 Rule 3 (1) of the F.C.T High Court (civil procedure) Rules 2018 which provides thus:-

***“ Where a party served with, the writ delivers to the Registrar before 5 days to the day fixed for hearing a notice in writing that he intends to defend the suit together with an affidavit disclosing a defence on the merit, the court may give him leave to defend upon terms as the court may think just.”***

Also, in the case of J. O. E. CO Ltd V SKYE BANK PLC (2006)6 NWLR (pt 1138) 518.

The court held:-

***“.....It is clear from the above that filing of the notice of intention to defend together with an affidavit disclosing a defence on the merit must be done on or before the date fixed for hearing the undefended suit, otherwise, the defendant would be out of time in doing so. In other words, where a defendant fails or neglects to file a notice of intention to defend together with an affidavit disclosing a defence on the merit on or before the dated fixed for hearing of the case, he can only do so upon a proper application. This is so because on the date fixed for the hearing, if no such notice and affidavit have been filed rule 4 and 23 empowers the court to***

***enter judgment in favour of the plaintiff as the suit would truly be undefended .”***

Similarly, it was held in the case of *ONOEYO V UBN PLC* (2014 LPELR-24242 thus:-

***“ The essence of the undefended list is for quick dispensation of justice to the parties. Therefore, upon service of a writ of summons in respect of a suit on the undefended suit on the defendant, the latter must deliver or file a notice of intention to defend and together with the said notice he must file an affidavit disclosing a defence on the merit. And where the defendant fails to do so or act, then judgment may be entered against him as per the writ of Summons without necessarily calling on the plaintiff to formally prove his claim by calling witnesses to testify.”***

D.C. Nwagbara Esq has applied for judgment in support of the claim. In the case at hand, the claimant has attached several exhibits in proof of his claims and they're as follows.

- (1) A letter from the 1<sup>st</sup> and 2<sup>nd</sup> claimants dated 21<sup>st</sup> May 2014 on an offer for sale of a 4-Bedroom Detached Bungalow at Jenew Homes plot 171, plot No. 3 Cadastral Zone D02, Karsana South District Abuja marked as exhibit JNL 1.
- (2) A Demand letter of the increased, reviewed Allocation fee served on the defendant with proof of service dated 21/5/14, marked as exhibits JNL 2 and JNL 2A respectively.
- (3) A Board Resolution of stakeholders meeting of the claimants dated 13<sup>th</sup> March 2019, marked as exhibit JNL 3.

From the contents of the claimants affidavit, it is stated therein that sometime in May 2014, the defendant approached the 1<sup>st</sup> and 2<sup>nd</sup> claimants to communicate his serious interest in the purchase of a 4-Bedroom Detached Bungalow at Jenew Homes plot 171, plot No. 3, Cadastral Zone Do2, Karasan south District Abuja same being properly owned by the plaintiffs/ claimants.

That sequel to the above, the 1<sup>st</sup> and 2<sup>nd</sup> claimants via a letter dated 21<sup>st</sup> May 2014 made an offer for sale of the aforementioned detached Bungalow

subject to terms and conditions which the defendant accepted and made a part payment of #7, 537,000.00 (seven million, five hundred and thirty –seven thousand Naira) only.

That subject to paragraphs 2, 3,6 and 9 of the terms and conditions of the letter of offer for sale dated 21/5/14, the price for the property was increased to #16,600,00 (sixteen million six hundred Naira only via a letter dated 16<sup>th</sup> March 2019 as follows:-

Principal Amount .....#12,000,000.00 Vat (5%).....#600,000.00

Infrastructural Development ....#4,000,000.00 total payment =#16,600,00.00

That the letter of Demand of the increased/reviewed Allocation fee was served on the Defendant with proof of service attached.

That before the increase/review, the Defendant had made a part payment of #7,537,00.00 (seven million five hundred and thirty seven thousand Naira) only leaving a balance of #7,288,000.00 (seven million, two hundred and eighty thousand Naira) only ) please see paragraphs 6 to 11 of the claimant’s affidavit.

Paragraph 12 of the said Affidavit provides:-

***“ That the increased Allocation fee of #16,600,000.00 (sixteen million six hundred thousand Naira) less a part payment of #7, 537,000.00 (seven million, five hundred and thirty-seven thousand Naira) earlier made, the defendant is now owing an outstanding balance of #9,063,000.00 (Nine million sixty-three thousand Naira) only. ”***

Paragraph 16:-

***“ That the Defendant’s continued non-payment of the outstanding balance has caused economic hardship and set back to the plaintiffs.”***

Therefore, I have carefully considered the claims of the plaintiff as endorsed on the writ of Summons, the supporting affidavit and all the annexures therein marked as exhibits JNL1, JNL 2, JNL 2A and JNL3 respectively. And I have also considered the fact that the defendant has failed and neglected to file any

process to defend this suit. The consequence is that the averments contained in the claimant's supporting affidavit remain unchallenged, uncontradicted and uncontraverted and the court can act on them.

In this regard I refer to the case of MABAMIJE V OJO (2016) LPELR-26058) (SC) the court held:-

***".....Where an affidavit is filed deposing to certain material facts and the other party does not file a counter affidavit to dispute the facts, the facts deposed to in the affidavit would be deemed, unchallenged and undisputed."***

It is on the basis of the above reasoning that I find that the claimants have proved their case on the balance of probability and are therefore entitled to the reliefs sought as per the claims on the writ of Summons.

Consequently, therefore, judgment is hereby entered for the claimants against the Defendants as per the claims on the writ of Summons.

Signed

Hon. Justice Samirah Umar Bature

10/10/19

Counsel: we are most obliged.