

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

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT HIGH COURT MAITAMA –ABUJA**

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

**COURT CLERKS: JAMILA OMEKE & ORS**  
**COURT NUMBER: HIGH COURT NO. 34**  
**CASE NUMBER: SUIT NO. FCT/HC/CV/1759/19**  
**DATE: 10<sup>TH</sup> OCTOBER, 2019**

**BETWEEN:**

**JENEW NIGERIA LTD.....CLAIMANT**

**AND**

**OVIE MOSES.....DEFENDANT**

APPEARANCE  
D. C. Nwagbara Esq for the Claimant.

**JUDGMENT**

The claimant filed this suit on the 29/4/2019 under the undefended list claiming against the defendant as follows:-

- (1) The sum of #6,435,000.00 (six million three hundred and forty five 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 Do 2, Karsana south District, Abuja.
- (2) Cost of this action

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

The writ which was issued by D.C Nwagbara Esq, solicitor to the claimants is also supported by a 21 paragraphed affidavit deposed to by one Olushola O. Olayinko, secretary in the law firm of D.C Nwagbara chambers, and some annexures marked as exhibits JNL1, JNL2/ JNL2A and JNL 3 respectively.

The matter came up for hearing on 3/10/2019. On that date, this was no representation for the defendant despite proof of service following an order for substituted service on the defendant by pasting which was made on 25/6/1019 proof of service dated 9/7/19 respectively. Hearing notice for hearing of this suit slated against 9/10/2019, same dated 4/10/2019 is also attached to the Court's file.

Inspite of all that, the defendant in the instant case has failed or neglected to file any process showing intention to defend this suit as required by law.

Order 35 Rule 3 (1) of the FCT High Court (civil procedure) Rules 2018 provides:-

***“ 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 such terms as the court my think just.”***

Order 35 rule 4 provides thus:-

***“ Where a defendant neglects to deliver the notice of defence and an affidavit prescribed by Rule 3 (1) or is not given leave to defend by the court, the suit shall be heard as an undefended suit and judgment given accordingly.***

(underlining mine for emphasis)

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

***“ The essence of suits on 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 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.”***

It is trite law that the purpose of the undefended list procedure is to save judicial time and expense. Therefore, a defendant who intends to challenge the suit, must file a notice of intention to defend along with an affidavit disclosing a defence on the merit. Please see the case of J. O. E CO. LTD V SKYE BANK PLC (2006) 6 NWLR (Pt111 38) 518.

As stated earlier, the defendant has not challenged this suit by filing the necessary processes. On this premise, J.C. Nwagbara Esq learned claimant’s counsel has applied for judgment to be entered in favour of the claimants.

In the instant case , the claimant has attached some exhibits in support of its claims before the court and they are as follows:-

- (1) A letter written by the claimants for an offer for sale of a three Bedroom Bungalow at Jenew Homes plot No.o3, cadastral Zone Do 2, Karsana south District Abuja dated 27/7/2015 same being property owned by the claimants marked as exhibit JNL1.
- (2) A letter of Demand on increased/Reviewed Allocation fee served on the Defendant as well as proof of service of the said letter marked as exhibits JNL 2 and JNL 2A Respectively.
- (3) Board Resolution by the claimants dated 13<sup>th</sup> March , 2019 marked as exhibit JNL 3.

From the averments contained in the claimant’s affidavit, it is clear that the defendant had approached the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs showing interest in the

purchase of a three Bedroom Bungalow at Jenew Homes plot No.03, cadastral Zone D 02, Karsana south District Abuja. That sequel to that, the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs via a letter dated 27<sup>th</sup> July, 2015 made an offer for sale of the aforementioned 3-bedroom Bungalow to the defendant subject to terms and conditions which the defendant accepted and made a part payment of #2,200.00(two million two hundred thousand Naira) only.

That subject to paragraphs 2, 3, 5, and 9 of the Terms and Conditions of the letter of offer for sale dated 27<sup>th</sup> July 2017, the price of the property was increased/reviewed to #12,525,000.00(twelve million, five hundred and twenty five thousand Naira) only as follows:-

Principal Amount #9,500,000.

VAT (5%).....#425,000.00,infrastructural Development fee..#26000,000.00

Total payment =.....#12,525,000.00

That the defendant agreed to purchase the aforementioned three bedroom bungalow on the above terms, made a part payment in the sum of #5,500,000.00(five million, five hundred thousand Naira)

Please see paragraphs 6 to 9 of the claimants affidavit.

Again, the claimant avers in paragraph 11 thus:-

***“ That the increased Allocation fee of #12,525,000.00 (twelve million, five hundred and twenty five thousand Naira) only less a part payment of #5,500,000.00 only earlier made gives an outstanding balance of #7,025,000.00 (seven million, twenty five thousand Naira) only.”***

Paragraph 12:-

***“ That the increase/review was in line with the agreed terms and conditions of the offer exhibit JNL 1 and neccesitated by the high Dollar exchange rate affecting the cost of infrastructural materials in the market presently.”***

Paragraph 14:

***“ That the defendant’s continued non-payment of the outstanding balance is delaying the infrastructural development and finishing of the Estate layout to the detriment of the plaintiffs and other purchasers who have since built their own now waiting for asphaltting of the streets and installation of other infrastructures. ”***

Paragraph 17:-

***“ That if the court does not intervene to compel the Defendant to pay the plaintiffs, the other subscribers/purchasers who have since finished building their own houses therein and now waiting to pack in, might sue us ( the plaintiffs) for failing to put the infrastructures in place.”***

Paragraph 18:

***“That I know that the Defendant does not have any defence to this suit.”***

I have carefully considered the claims of the plaintiffs, the entire averments contained in the supporting affidavit, as well as all the exhibits attached therein.

I have equally considered the fact that the defendant has failed and neglected to file any process to defend this suit as required, by the rules. Therefore, this court has no option then to treat the averments in the claimant’s affidavit as unchallenged, uncontradicted and uncontroverted. As such this court can act or them.

On this premise, I refer to the case of HEIN NEBUNG ISENSEE V UBA PLC (2012)10 NWLR (Pt 1326) 357 at 384, paragraph c, the court held:-

***“ Where evidence is uncontroverted, unchallenged and credible, the court will be left with no option than to accept same.....”***

Finally and without further ado, judgment is hereby entered in favour of the claimants as endorsed in writ of Summons.

Signed

***Hon. Justice Samirah Umar Bature***

9/10/2019

counsel :we are most grateful.