

**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL
CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI HIGH COURT
BEFORE HIS LORDSHIP HON. JUSTICE A.A.I. BANJOKO-
JUDGE
DELIVERED ON THE 4TH OF FEBRUARY 2020**

SUIT NO: FCT/HC/CV/1452/18

BETWEEN

**DR SHUAIBU BELGORE.....1ST CLAIMANT
HAJIYA SA'ADATU BELGORE.....2ND CLAIMANT
HALIMA BELGORE3RD CLAIMANT**

AND

**NIGERIAN COMMUNICATIONS COMMISSION
STAFF MULTIPURPOSE COOPERATIVES
SOCIETY
LIMITED.....DEFENDANTS**

HABIB TAHIL ESQ. FOR THE CLAIMANTS

SAMUEL O. ABU ESQ. FOR THE DEFENDANTS

By way of a Writ of Summons dated the 11th of March 2018 and filed on the 11th day of April 2018 under the Un defended Cause List of this Court, the Claimants are claiming the following Reliefs against the Defendants: -

1. The Sum of N5,225,000.00 (Five Million, Two Hundred and Twenty Five Thousand Naira Only) being the total

- Sum paid to the Defendant by the Claimants;
2. Interest on the Principal Sum at the rate of 10% (Ten) percent per annum for the date payments were made to the Defendant until Judgment is given in this Suit;
 3. Interest on the Judgment Sum at 3 percent (3%) above NIBOR Rates per annum from the date of Judgment till the amount is Fully Liquidated;
 4. GENERAL DAMAGES in the Sum of N2, 000,000.00 (Two Million Naira) to each the Claimants for being deprived of the benefits of the property, which had been fully paid for, over a period of 6 (six) years without any justifiable reason;
 5. EXEMPLARY DAMAGES in the Sum of N2, 000,000.00 (Two Million Naira) only to each Claimant for the deliberate withholding of the said properties for no just cause despite having acknowledge Receipt of Payment; and
 6. Cost of this action in the Sum of N2, 500,000.00 (Two Million, Five Hundred Thousand Naira) only.

Filed in Support is a Nine Paragraph Affidavit deposed to by Mr. Habib Tahir, a Legal Practitioner working in the Law Firm of Belgore, Olufadi & Co., and Twelve Annexures.

The Originating Processes were served on the Respondents on the 18th day of May 2018, and there is Evidence of Service of Three Hearing Notices, each effected on the 17th day of May 2018; the 4th of October 2018 and the 14th of November 2019.

The Respondent, in reaction to the Processes, filed a Notice of Preliminary Objection dated the 9th day of November 2018, urging the Court to strike out the Suit for lack on jurisdiction, relying on the following Grounds: -

1. That the Jurisdiction of the Court to entertain the Claimant's Suit, as presently constituted, has been ousted

by the Provisions of **Sections 49 and 50 of the Nigerian Cooperative Societies Act.**

2. That the Jurisdiction of this Court cannot be invoked in the circumstances of the Suit of the Claimants.
3. That the Suit as presently constituted between the Parties is incompetent.

The Claimants, as Respondent, reacted to this Process by filing a Counter Affidavit of Nine Paragraphs to which there was filed a Further and Better Affidavit of Eleven Paragraphs.

The Court, in a decided Ruling overruled and dismissed these Objections on the 27th day of June 2019, and Parties were asked to present their case before the Court.

It appears that after this Ruling, the Defendant failed or refused to show up and prosecute its Defence, despite service of Hearing Notices on them.

On the 19th day of November 2019, the Defendant was yet again absent, and the Claimants went ahead to make their Case, relying on the Supporting Affidavits and Documentary Evidence.

The Case of the Claimants as gleaned from their Affidavit is that the Defendant represented itself to the Claimants as a Cooperative Society duly registered under the Nigerian Cooperative Societies Act with **Registration Number 4690**. It had advertised to the Public calling for investment in its Estate known as NCC Co-operative Estate, to be developed in Sabon Lugbe II, Lugbe.

Following this Call, the Claimants all indicated interest in varied Property Types in the Estate, by purchasing the Application Forms and making necessary Payments for the

Property Types sought.

On the 17 November 2009, 1st and 2nd Claimants, through the 2nd Claimant, made Payment in the Sum of N5, 000 (Five Thousand Naira) each to the Defendant based on their Land Application Forms for Three Bedroom Bungalows in the Estate.

As Proof of the Payments, they attached as Exhibit, **Exhibits HT 1 and 2**, which are Receipts issued by the Defendant acknowledging Payments for the Sum of N5,000.00 by each of the 1st and 2nd Claimants.

On the 8th day of October 2010, the 1st Claimant made Full Payment in the Sum of N600,000.00 (Six Hundred Thousand Naira) to the Defendant for a Plot of Land in the Estate. **Exhibit HT3** is the Receipt issued by the Defendant acknowledging full payment for the purchase.

As regards the 2nd Claimant, he made an Initial Payment in the Sum of N420,000.00 (Four Hundred and Twenty Thousand Naira) on 12th January 2010, for the Purchase of Land in respect of a Three Bedroom Bungalow in the Estate and on 4th May 2010, effected the balance payment in the Sum of N180,000.00 (One Hundred and Eighty Thousand Naira) to complete his Purchase Price of N600,000.00 (Six Hundred Thousand Naira). He attached **Exhibits HT 4 and 5** as the Receipts issued to him by the Defendant.

By the 23rd day of November 2011, the Claimants also had made various payments to the Defendant for the Purchase of more Properties in the Estate. For each Application, they each paid the Sum of N5,000.00 (Five Hundred Thousand Naira) as Fees for the Application Forms. **Exhibits HT 6, 7 and 8 annexed** are Copies of the Acknowledging Receipts issued by the Defendant.

According to the 1st Claimant, he had on the same date, and

equally with the 2nd Claimant, made Payment to the Defendant in the Sum of N1, 500,000.00 (One Million, Five Hundred Thousand Naira) for the purchase of 750 Square Meters of Land in the Estate. It was further averred that the 3rd Claimant made Payment of the Sum of N1, 000,000.00 (One Million Naira) for the purchase of 600 Square Meters of Land in the Estate, and annexed further were **Exhibits HT 9, 10 and 11**, being the Receipts issued by the Defendant to each of the Claimants acknowledging receipts of their Payments.

It was contended that despite repeated Oral Demands by the Claimants for their Possession of their Investments, the Defendant, contrary to the Terms of Contract, has refused to either grant the Claimants physical possession of the Plots or given an explanation as to why it denied them access to their Investments since the past Seven Years.

Being fed up with antics of the Defendant and not having any response to their numerous requests, the Claimants instructed their Counsel, Messrs. Belgore, Olufadi & Co to make demands for the Sums on their behalf.

On the 1st of November 2017, a Letter of Demand was issued to the Defendant, copying the Defendant's Parent Governmental Agency but till date no response has been received from either the Defendant or its Parent Agency. To buttress his claim, he attached a Copy of the Demand Letter as **Exhibit HT 12**.

According to him, failure of the Defendant to give Title to the Claimants, cause a Refund or even respond to their Counsel's letter for over Seven years was done in bad faith and was not justifiable.

Finally, due to the refusal and deliberate efforts on the part of

the Defendant to frustrate the Claimants from deriving benefit from their Investments, the Claimants have collectively incurred the Sum of N2, 500,000.00 (Two Million Five Hundred Thousand Naira) as Legal Fees to Prosecute this Suit.

The Court will consider the following Cash Receipts issued by the NCC Staff Multi-Purpose Cooperative Society Limited and they are as follows: -

1. The Sum of Five Thousand Naira (N5, 000) received from Sa'adatu Belgore being Payment of Form Fee dated the 17th of November 2009 and is marked as **Exhibit HT 1**;
2. The Sum of Five Thousand Naira (N5, 000) received from Sa'adatu Belgore being Payment of Form Fee dated the 17th of November 2009 and is marked as **Exhibit HT 2**;
3. The Sum of Six Hundred Thousand Naira (N600, 000) received from Dr. Shuaib Belgore being Payment of Land (Complete Payment) dated the 8th of October 2010 and is marked as **Exhibit HT 3**;
4. The Sum of Four Hundred and Twenty Thousand Naira (N420, 000) received from Mrs. Saadatu Belgore being Payment of Commitment Fee dated the 12th of January 2010 and is marked as **Exhibit HT 4**;
5. The Sum of One and Eighty Thousand Naira (N180, 000) received from Saadatu Belgore being Payment of Final Payment of Land at Lugbe dated the 4th of May 2010 and is marked as **Exhibit HT 5**;
6. The Sum of Five Thousand Naira (N5, 000) received from Shuaib Belgore being Land Application Form dated the 23rd of November 2011 and is marked as **Exhibit HT 6**;

7. The Sum of Five Thousand Naira (N5, 000) received from Saadatu Belgore being Payment for Land Application Form dated the 23rd of November 2011 and is marked as **Exhibit HT 7**;
8. The Sum of Five Thousand Naira (N5, 000) received from Halima Belgore being Payment of Form Fee dated the 23rd of November 2011 and is marked as **Exhibit HT 8**;
9. The Sum of One Million, Five Hundred Thousand Naira (N1, 500, 000) received from Shuaib Belgore being Payment for 750 Square Meters in the NCC Cooperative Estate, Lugbe dated the 23rd of November 2011 and is marked as **Exhibit HT 9**;
10. The Sum of One Million, Five Hundred Thousand Naira (N1, 500, 000) received from Saadatu Belgore being Payment for 750 Square Meters in the NCC Cooperative Estate, Lugbe dated the 23rd of November 2011 and is marked as **Exhibit HT 10**;
11. The Sum of One Million Naira (N1, 000, 000) received from Halima Belgore being Payment for 600 Square Meters in the NCC Cooperative Estate, Lugbe dated the 23rd of November 2011 and is marked as **Exhibit H11**; and finally will also consider the
12. Acknowledged Demand Letter dated the 1 November 2017 written by the Claimants' Solicitor to the Chairman of the Defendant for the Sum of Five Million Two Hundred Thousand Naira (N5, 200, 000) paid to them for Properties subscribed by the Claimants and this Letter is marked as **Exhibit HT 12**.

After a Careful Consideration of the totality of the Case, the Court finds a Sole Issue necessary for the just determination of this Case, which is “**Whether the Claimants Case is Meritorious and whether they are entitled to their Reliefs**”.

In an Un defended Cause List, the Application must be for a Liquidated Money Demand Liquidated Money Demand, which is a Specific Amount that has accrued in favour of the Claimant from the Defendant. **EDOZIE JCA SAVANNAH BANK PLC V. KYENTU LTD (1998) 2 NWLR PART 536 PAGE 41 AT 56. MUHAMMED JCA IN NORTEX NIGERIA LTD V. FRANCE TOOLS COMPANY LTD (1997) 4 NWLR PART 501 PAGE 603 AT 609 IDIGBE JSC IN ODUME AND OTHERS V. NNACHI AND OTHERS (1964) ALL NLR 324, 328.**

It is trite that the Application must be supported by an Affidavit setting forth the Grounds upon which the Claim is based. It must also state that in the Deponent belief there is no defence thereto. This Statement is an essential part of the Affidavit supporting the Application. Reference is made to the Decided Cases of **TAMIN SYSTEMS CONSULTANTS LTD VS BRAITHWAITE (1996) 5 NWLR PART 449 PAGE 459, 469 AND HISPANIC CONSTRUCTIONS NIGERIA LTD VS OBA ODOGIYAN (1986) 4 NWLR PART 34 PAGE 248.**

Affidavit in Support of such an Application as this constitutes Evidence. They are clearly different from Averments in Pleadings, which have to be supported by Evidence. See **B.V. MAGNUSSON VS KOIKI (1993) 12 SCNJ AT 114.** They are also taken as established in regard to Matters not controverted in a Counter-affidavit. See further, the Case of **GLOBE FISHING**

**INDUSTRIES LTD & 4 OTHERS VS CHIEF FOLARIN COKER
(1990) 11 SCNJ 56.**

Regard is had to the Cases of **MISS BADEJO VS FEDERAL MINISTRY OF EDUCATION (1996) 9-10 SCNJ 51, AND ONWUNARI LONG-JOHN VS CHIEF BLAKK & OTHERS (1998) 5 SCNJ 68** to hold that where Affidavit Evidence was not specifically denied, challenged or controverted by a Counter-Affidavit or Further Affidavit by the Adverse Party, the Averments are deemed to be unchallenged and undisputed in respect of Allegations contained therein. See further the Cases of **ECO CONSULT LTD VS PANCHO VILLA LTD (2000) 3 NWLR PT 647 PAGE 141 AND NWOSU VS IMO STATE (1990) 2 NWLR PT 135 PAGE 688**

The unchallenged Averments must be deemed true unless the Evidence so adduced, is incredible. Eso JCA (as he then was) held in **SODIPO VS LEMINKAINEN (1986) 1 SC 198, @ 208** that where the Defendant was duly Served with the Processes and failed to do anything on the date fixed for Hearing, Judgment will be given for the Claimant, and the Defendant cannot be heard later to complain of lack of Fair Hearing. However, the Claimants must be seen to have proven their Case, and satisfy the Court that he is legally entitled to the Claim and Reliefs sought

As it stands, there is nothing before the Court from the Defence in rebuttal to the Claimant's Claims and the Claimant's Claims remain unchallenged and uncontroverted, as the absence of a proper denial in this instant, is deemed to be an Admission.

Further, the Claimants in their Affidavit have aptly demonstrated and satisfied the Court through Documentary Evidence, the Grounds upon which their Claim was based as required in the Case of **HIMMA MERCHANTS VS INUWA ALIYU (1994) 6 SCNJ 87 AND ACB VS GWAGWADA (1994) 4 SCNJ 268.**

In Conclusion, the Court finds as follows: -

AN Order of Court is made awarding the Sum of N5, 225, 000.00 (Five Million, Two Hundred and Twenty Five Thousand Naira Only) being the total Sum paid to the Defendant by the Claimants.

Under **Order 56 Rule 6 of Rules of this Court 2018**, the Court Orders for Interest on the Principal Sum at the rate of 10% (Ten) percent Per Annum from the date Payments were made to the Defendant, until Judgment is given in this Suit;

The Claims for Interest on the Judgment Sum at 3 percent (3%) above NIBOR Rates per annum from the date of Judgment till the amount is Fully Liquidated as well as the Claim for General Damages in the Sum of N2, 000,000.00 (Two Million Naira) and Exemplary Damages in the Sum of N2, 000,000.00 (Two Million Naira) are not Claims contemplated under the Undefended Cause List Procedure and are accordingly found unmeritorious and are dismissed as incompetent Claims.

As regards the Cost of this Action, it is clear that Costs awarded on Fixed Principles and not on whimsical personal basis of Individuals or the Court as held in the Case of **HACO LTD VS DAPS BROWN (1973) 4 SC 149.** They are usually granted to a Successful Party unless there are Special Reasons given for doing otherwise **OGBOGU VS NDIRIBE (1992) 6 SCNJ PAGE 301; AKINBOBOLA VS FILSON FISCO (1991) 1 SCNJ AT PAGE**

**127; AND UNION BANK OF NIGERIA LTD VS NWAOKOLO
(1995) 6 NWLR PART 400 PAGE 127.**

Applying these Principles, the Court will award a Cost of N500,000.

In Conclusion, Judgment is entered for the Claimants in the Main.

**HON. JUSTICE A.A.I. BANJOKO
JUDGE**