

**IN THE HIGH COURT OF JUSTICE OF THE  
FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI - ABUJA**

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPower EBAHOR**

**COURT NO: 11**

**SUIT NO: FCT/HC/CV/1052/2019**

**MOTION: M/6710/19**

**BETWEEN:**

**MR AGBOOLA JOHNSON ADEKUNLE.....PLAINTIFF**

**VS**

**1. MILKLAND HOMES LTD**

**2. KHALID ISA.....DEFENDANTS**

**RULING/JUDGMENT**

By a Writ of Summons dated 7/2/2019 and filed on 11/2/2019 under the "Undefended List" the Claimant claims against the Defendants as follows:-

- (1) An Award of the sum of ₦13,000,000.00 (Thirteen Million Naira) being the deposit paid by the Claimant to Defendants in respect of a four (4) Bedroom Detached Duplex (Block C6) at Marcus Poli Nigeria Limited's Estate described as Plot 72 (79) Cadastral 1 Zone CO5, Cafe District, Phase 111 Abuja
- (2) An award of ten (10%) interest from the date of judgment till judgment sum is liquidated.

Accompanying the Writ of Summons is a 17 paragraph affidavit with (8) Eight Exhibits marked "AA1 – AA8", sworn to by Agboola Johnson Adekunle.

With Leave of Court granted on 30/5/2019, the Defendants were duly served with the Originating processes on 15/11/2019 by pasting at their last known address. Despite, service of the processes, the Defendants failed to file the requisite Notice of Intention to Defend as required by Order 34 Rule 3 (1) of FCT High (Civil Procedure) Rules 2018 (hereinafter called the Rules).

The case of the Claimant is that pursuant to application, the Defendant by a Letter of Allocation dated 17/2/2010 and 20/4/2012, allocated Plot 72 (79) at Marcus Poli Nigeria Limited Estate, on payment of an initial deposit of ₦13,000,000.00 (Thirteen Million Naira) evidence by Exhibit "AA1". That Indemnity Agreement dated 14/3/2016 was signed, evidence by Exhibit "AA2". That upon payment was issued a Letter of Authority to proceed to Site /Indemnity on Site, evidence by Exhibit "AA3". Further that he could not proceed to build pursuant to a claim to the land by another, hence the Defendant proceeded to offer another Plot vide a Letter dated 29/12/2011, Exhibit "AA4", yet again could not proceed because of adverse claim and grant another Plot vide a letter dated 1/3/2013, Exhibit "AA5". Further because of lack of access to the land, the Defendant again allocated another Plot by a letter dated 7/3/2016- Exhibit "AA6". The sequel to this allocation, the Defendants wrote a Letter demanding for the payment of ₦35,000,000.00 (Thirty Five Million Naira) for his Plot described as a carcass of a Duplex dated 10/3/2017 – Exhibit "AA7". That on receipt of

this letter from the Defendant, the Claimant outrightly refused the offer and wrote a letter dated 13/12/2018 through his Lawyer to the Defendants demanding for refund of the initial ₦13,000,000.00 deposit paid, having failed to keep to their promises as per the agreement.

The Claimant believes that the Defendants have no defence to this action and urge the court to grant the claim of the Claimant.

After a careful consideration of the case of the Claimant as contained in the affidavit in support of the Writ of Summons, inclusive of the Exhibits, the court finds that only one issue calls for determination:-

“Whether the Claimant has proved his case to be entitled to Judgment under the Undefended List”.

By the Provision of Order 35 Rule 3 (1) of the Rules of Court, where a Defendant is served with a Writ of Summons under the Undefended List and marked as such, the Defendant has 5 (clear) days to file his Notice of Intention to Defend, along with an affidavit disclosing that defence.

Further by Order 35 Rule 4 of the Rules of Court, where a Defendant neglect to deliver the Notice to Defend and an affidavit disclosing a defence as prescribed by Order 35 Rule 3 (1) of the Rules, or is not given leave to defend by the court, the Suit shall be heard as Undefended and judgment given accordingly.

In this instant case, the Defendant were duly served with the Originating Process, but failed to file the requisite Notice to Defend or affidavit disclosing a defence on the merit. The implication of this, that the Suit a

Undefended as the Defendants can be said to have no defence to same and or conceded to the claim of the Claimant. See case of Ekiti Local Government Area Vs Aje Printing (Nig) Ltd (2009) 4 NWLR (PT. 1131) 304 @ 313. Accordingly, the court can proceed to enter judgment, subject to satisfactory proof of his case from the affidavit evidence before the court. See Udoka Vs Asuquo (2008) 9 NWLR (PT.1091) 15 @ 18.

Having carefully considered the affidavit evidence of the Claimant, along with the Exhibits attached, the court finds that the Claimant has been able to establish his claim against the Defendants and which facts remained unchallenged and uncontroverted. Accordingly enter judgment in favour of the Claimant.

In conclusion, Judgment is hereby entered as follows:-

- (1) It is hereby ordered that the Defendants pay the sum of ₦13,000,000.00 (Thirteen Million Naira) naira being the deposit paid by the Claimant to Defendants in respect of a (4) Four Bedroom Detached Duplex (Block C6) at Marcus Poli Nigeria Limited Estate described as Plot 72 (79) Cadastral Zone CO5, Cafe District, Phase 111, Abuja.
- (2) On relief 2, by the Provision of Order 39 Rule 4 of the Rules of Court, this relief avail, the Claimant, accordingly, it is ordered that 10% interest on the Judgment sum shall be paid from the date of Judgment till the total sum is liquidated.

This is the Judgment of the court.

**HON JUSTICE O.C AGBAZA**

Judge

14/5/2020

IGWE UGOCHUKWU - FOR THE CLAIMANT

NO REPRESENTATION FOR THE DEFENDANTS