

**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/1974/2018

MOTION NO: M/9123/19

BETWEEN:

PRINCE ADEKUNLE DOSUNMU.....CLAIMANT/APPLICANT

VS

MRS LINDA OLUCHI SAMUEL.....DEFENDANT/RESPONDENT

RULING/JUDGMENT

By a Motion on Notice dated 26/9/19, No. M/9123/19, brought pursuant to Order 11, Order 43 Rule 1 (1-4) and under the inherent jurisdiction of this Hon. Court praying for the following reliefs:-

- (1) An Order granting summary judgment in favour of the Claimant in the instant Suit;
- (2) An Order granting all the Claimant's reliefs to wit:
 - (i) An Order of this Hon. Court directing the Defendant to pay to the Claimant the sum of ₦2,500,000.00 (Two Million, Five Hundred Thousand Naira) only being Claimant's funds paid to the Defendant to purchase the

purported landed properties at Lugbe 1 Extension Layout, Abuja, which consideration has failed with interest at the prevailing bank rate since 2012.

- (ii) The sum of ₦15,000,000.00 (Fifteen Million Naira) being damages for denying and/or depriving the Claimant of the access and use of the said Claimant's funds of ₦2,500,000.00 (Two Million, Five Hundred Thousand Naira) only being Claimant's fund paid to the Defendant to purchase the purported landed properties at Lugbe 1 Extension Layout, Abuja, since year 2011 till date which consideration has failed.
- (iii) The sum of ₦3,000,000.00 (Three Million Naira) being general damages.
- (iv) Twenty-one percent (21%) interest on the judgment sum from the date of judgment till final liquidation of the said judgment sum.

ALTERNATIVELY

AN ORDER OF THIS HONOURABLE COURT directing the Defendant to provide another one hectare of land Lugbe 1 Extension Layout, Abuja or their equivalent.

- (3) And for such further order(s) as the Honourable Court may deem fit to make in the circumstance of this Suit.

Also take note that the grounds of this application are that:

- (i) The Claimant have filed his Originating Process with Statement of Claim, the Exhibits and the deposition of his witness(es);
- (ii) The Claimant believe that there is no defence to his case and this Honourable Court has the power to enter summary judgment for the Claimant;
- (iii) It is in the interest of justice to grant the Claimant/Applicant's reliefs.

The processes and Hearing Notice was served on the Defendant, yet the Defendant failed and/or neglected to file any counter affidavit in opposition. It must be mentioned that at the commencement of this matter, the Defendant appeared in person, with no legal representation, and asked for an adjournment, to enable them settle, this request was granted by this Hon. Court on 2/10/19. After several adjournment for Report of Settlement, the Defendant failed to appear in court and consequent upon the application of the Claimant Counsel, the court proceeded to hear the application of the Claimant Counsel in this instant Motion. The implication of all of these is that the Motion stands unchallenged and the court shall proceed to consider it.

The Claimant Counsel, Thomas Ojo Esq relying on the affidavit and Exhibits including the Written Address in support, urge the court to grant the reliefs as prayed.

In the Claimant/Applicant Written Address dated 25/9/19, settled by Sikiru O. Adewoye Esq, only one (1) issue was formulated for determination, which is;

Having regards to the extant facts and evidence before this Hon. Court, whether the Claimant's claim ought to be heard under the Summary Judgment Procedure and Judgment entered for the Claimant?

In his submission in brief, counsel contended that by the Provision of Order 11 Rule 1 (1) of the Rules of Court, that the court has the power to hear and determine this case under the Summary Judgment Procedure. That in this instant, the Applicant has by their affidavit in support, inclusive of the Exhibits attached, the Claimant has clearly demonstrated that this is a case where the court can so exercise that discretion to so do. In urging this court to grant, commended the court to the following judicial authorities; Lewis VsU.B.A. Plc (2016) 6 NWLR (PT. 1508) 329 @ 349 Para G – H; AkpanVsA.I.P& Inv. Co Ltd (2013) 12 NWLR (PT. 1369) 377.

Having carefully considered this instant application, unchallenged, submission of Claimant/Applicant Counsel, the judicial authorities cited, including Exhibit attached the court finds that the issue that calls for determination in this instance, is

“Whether the Claimant/Applicant has made out a case deserving of the court to enter summary judgment in their favour”.

Order 11 of the Rules of Court, makes Provision for Summary Judgment Procedure. Its purpose is for disposal of cases which are virtually

uncontestable with dispatch without the right of trial and it applies to cases where there can be no reasonable doubt that a Claimant is entitled to Judgment and where it is inexpedient to allow the Defendant to defend for mere purpose of delay. It is for plain and straight forward, not for the devious and crafty. See Order 11 Rule 1 of the Rules of Court; the case of Lewis Vs U.B.A (Supra) and Omega Maritime and Energy Ltd & 10r Vs Intercontinental Bank Plc (2016) ALL FWLR (PT. 849) (970) Pg 972 – 973 (CA).

In an application for Summary Judgment, as in this instant, the Claimant must state in his affidavit in support of the application that he believes that the Defendant has no defence to the claim and the grounds for his belief. See Woodgrant Ltd Vs Skye Bank Plc (2011) ALL FWLR (PT. 601). Also Order 11 Rule 1 of the Rules of Court. And when the Claimant applies for Summary Judgment, the burden is on the Defendant to satisfy the court that he has a good defence or to disclose other facts entitling him to defend and when it appears to court that the Defendant has a good defence, ought to be permitted to defend, may grant leave to the Defendant to defend the Suit. See Order 11 Rule 5 (1) of the Rules. See also Omega Maritime & Energy Ltd & Ors Vs Intercontinental Bank Plc (Supra) at 973. In this instant application, the Claimant/Applicant is seeking for an Order of Court to enter Judgment in Summary manner against the Defendant, upon facts deposed to and belief that the Defendant has no defence to claim. The Defendant on the other hand, did appear in person, pleaded for an out of court settlement, failed thereafter to come back to court to report settlement, and also did not react to this

application, despite service of Hearing Notice. This court has stated the implication of the Defendant's action and consider this application as unchallenged and act of the facts presented before it. See NjoemanaVsUgoboma&Ors (2014) LPELR – 22494 (CA), Court of Appeal stated;

“The law is well settled that any facts which has not been categorically countered or denied by a party, that fact is deemed admitted by the other party”.

I have critically perused the facts as stated in the affidavit evidence, inclusive of the Exhibits of the Claimant/Applicant in this instance application and noting that the Defendant has failed and/or neglected to react to the application to the court to consider their position. Clearly, by Paras 4 (i) – (xv) and 7 of the said affidavit in support, including the Exhibits, the court finds that the Claimants/Applicant has shown sufficiently a case deserving of the grant of the relief sought. Accordingly, this application succeeds and order granted as prayed.

Accordingly, it is hereby ordered as follows:-

- (1) An Order granting summary Judgment in favour of the Claimant in the instant Suit.
- (2) (i) An Order of this Hon. Court directing the Defendant to pay to the Claimant the sum of ₦2,500,000.00 (Two Million, Five Hundred Thousand Naira) only being Claimant's funds paid to the Defendant to purchase the

purported landed properties at Lugbe 1 Extension Layout, Abuja, which consideration has failed with interest at the prevailing bank rate since 2012.

(ii) On relief 2 (ii), the Claimant/Applicant prays for ₦15,000,000 (Fifteen Million Naira) being damages, I shall refuse this relief, on ground that the Applicant has failed to provide evidence required to enable the court to exercise its discretion to grant it. It is hereby refused.

(iii) On relief 2 (iii) payment of the sum ₦3,000,000.00 (Three Million Naira), being general damages. The grant of this relief is at the discretion of the court, to be exercised judiciously and judicially. General damages covers losses which are not capable of exact qualification. Though it need not and should not be specially pleaded, however, it is law that some evidence of such damages is required. See Taylor Vs Oghenevo (2012) ALL FWLR (PT. 610 1358 @ 1362 – 1363.

In this instance, the Claimant/Applicant has by Paras 4 (xiii) xiv and xv which remained unchallenged, shown sufficient proof of loss suffered as a result of the failed transaction. Accordingly, in exercise of the court discretion, the sum of ₦1,000,000.00 (One Million Naira) is granted as damages.

(iv) On relief 2 (iv), 21% percent interest on the judgment sum; by

the Provision of Order 39 Rule 4 of the Rules of Court, it is hereby ordered that 10% interest is payable on the Judgment sum from the date of the Judgment till final liquidation of the said Judgment sum.

This is the judgment of the court.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

28/5/2020

APPEARANCE:

THOMAS OJO- FOR THE CLAIMANT/APPLICANT

NO REPRESENTATIVE FOR THE DEFENDANT/RESPONDENT