

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA**

THIS TUESDAY, THE 30TH DAY OF JUNE, 2020.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: FCT/HC/CV/455/18

BETWEEN

ADAM SHUWA DAMBOAPLAINTIFF

AND

ALHAJI HALADU MOHAMMEDDEFENDANT

JUDGMENT

By a writ of summons on the Undefended List issued on 5th December, 2018, the plaintiff claims against the defendant as follows:

- 1. The sum of Fourteen Million Four Hundred and Fifty Thousand Naira (N14, 450, 000.00) being money paid to the Defendant for the price of a piece of land measuring approximately 1925.88mm² lying, being and situate at plot No. 1922 of Cadastral Zone C03 of Gwarinpa II with File No. AD 61806 dated 20th June, 2013.**
- 2. 10% interest per annum of the judgment debt from the date of judgment until it is fully liquidated.**
- 3. Two Million Naira (N2, 000, 000.00) cost of this action.**

Pursuant to **Order 35 of the Rules of Court**, the suit was on 15th January, 2019 placed for hearing on the undefended list.

The plaintiff encountered difficulties serving the defendant with the originating court processes. On 20th March, 2019, the court granted leave to the plaintiff to serve the defendant by substituted means. By proof of service filed by the bailiff of court on 2nd April, 2019, the defendant was served with the originating court process and hearing notice on 2nd April, 2019. The plaintiffs' counsel then informed court that parties were discussing settlement out of court which ultimately did not bear any positive result.

From the records of court despite the ample time given, the defendant never appeared in court or took any step(s) in the matter by filing any process. The applicable rules contemplates that upon receipt of the originating court process, he reacts by the specific filing of a notice in writing that he intends to defend the suit together with an affidavit disclosing a defence on the merit in compliance with **Order 35 Rule 3 (1) of the Rules of Court**.

It is only where a defendant take these steps within the purview of **Order 35 Rule 3(1)** and does so within five days to the day fixed for hearing or within a time as may be extended by court upon an application that the court may then grant leave to defend on terms as the court considers just. Where however, a defendant neglects to take these steps or comply with **Order 35 Rule 3(1) of the Rules of Court**, as the defendant has elected to do in this case, then the provision of **Order 35 Rule 4** comes into play and in such circumstances as rightly submitted by learned counsel to the plaintiff, the suit shall be heard as an undefended suit and judgment given accordingly.

I have above given a brief analysis of the applicable rules. I will simply apply it to the facts of this case which are largely uncontested and straightforward and I will here summarise the substance of the case of plaintiff. The plaintiff's case as made out in the affidavit in support of the writ is to the effect that the defendant sold a landed property situate at Plot 1922 of Cadastral Zone C03, Gwarinpa II with Right of Occupancy (R/O) attached vide Exhibit A for consideration in the sum of N13, 000, 000 (Thirteen Million Naira) only. That he paid the said amount into the

account of defendant vide Exhibit B and the defendant duly acknowledged receipt of the consideration vide Exhibit C.

Plaintiff averred that the defendant promised to avail him with the original Right of Occupancy which he said was with his Bank on payment of the consideration but he did not keep to his commitment. Rather, the defendant now told him that he will give him another land and he paid another N2, 500, 000 (Two Million, Five Hundred Thousand Naira) vide Exhibit D into the account of defendant. That the sums given to the defendant for the land now totaled the sum of N15, 500, 000 (Fifteen Million, Five Hundred Thousand Naira).

The plaintiff averred further that the defendant did not avail or give him the land or indeed any land despite collecting the huge amount from him. That after a lot of entreaties, the defendant clearly having no land to give now refunded the sum of N1, 050, 000 vide Exhibit E leaving the balance of N14, 450, 000 yet unpaid despite demands made for same. The solicitor's letter of demand for payment of the balance was attached as Exhibit F.

It is this outstanding balance due from defendant which in my opinion is clearly in the nature or realm of liquidated money claims that forms the basis of the principal claim of plaintiff. The defendant as stated at the beginning of this judgment has not in any manner challenged or controverted these clear depositions in support of the claim of plaintiff or filed any process disclosing any defence on the merit.

I therefore find these facts relating to the indebtedness of defendant as established. It is important to add that this failed agreement for sale of land was entered into in 2017 and it is now getting to three (3) years and the plaintiff has not been offered any land or the consideration he paid returned by defendant.

Agreements will be useless if parties do not abide by the terms they agree that will govern the relationship. It is therefore not only a legal but moral imperative that the defendant fully pays back the balance of the consideration he received for the land since he clearly has no land of his own to give plaintiff. It cannot and should not be seen as a matter of mere convenience. The defendant is therefore clearly indebted to the plaintiff to the extent of the amount claimed on the extant writ.

I accordingly hold that the plaintiff is entitled to be refunded the balance of the consideration for the failed land transaction in the sum of N14, 450, 000 (Fourteen Million, Four Hundred and Fifty Thousand Naira only) as the defendant has not disclosed any defence on the merit enjoining me to transfer this matter to the general cause list. See **Ben Thomas Hotels Ltd V. Sebi Furniture Ltd (1989) 5 NWLR (pt.123) 523.**

The claim of 10% interest on the Judgment sum is one granted at the discretion of the court pursuant to the provision of **Order 39 Rule 4 of the Rules of Court.** On a calm consideration of the facts of this case, this relief is availing.

The final Relief is for N2, 000, 000 (Two Million Naira) cost of this action. I have carefully gone through the entire affidavit and there is absolutely no basis to situate the amount claimed here for cost of action. Cost is not awarded as a largesse and it is also not granted as a matter of course. Under the provision of **Order 56 Rule 3 of the Rules of Court,** cost is granted usually to indemnify a party for the expenses to which he may have been necessarily put to in the proceedings as well as been compensated for his time and effort in coming to court. Taking into account the entire circumstances of this case, the sum of N20, 000 will appear to me reasonable as cost in the circumstances.

In summation and for avoidance of doubt, pursuant to **Order 35 Rule 4 of the Rules of Court 2018,** I must proceed to enter judgment in favour of the plaintiff. Judgment is hereby entered for the plaintiff against the defendant as follows:

- 1. The sum of N14, 500, 000 (Fourteen Million, Five Hundred Thousand Naira) being balance of the money paid to the defendant by plaintiff for the failed land transaction lying, being and situate at Plot No. 1922 Cadastral Zone C03, Gwarinpa II, FCT Abuja.**
- 2. I award 10% interest on the Judgment sum above per annum from today until the final liquidation of the Judgment sum.**
- 3. I award costs assessed at N20, 000 payable by defendant to the Plaintiff.**

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Hon. Justice A.I. Kutigi

Appearances:

M.A. Bukar, Esq. holding the brief of M.M. Gumsari, Esq. for the Plaintiff.