

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA-ABUJA

ON THE 30TH DAY OF MARCH 2021

BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI

PRESIDING JUDGE

SUIT NO: FCT/HC/CV/3471/13

BETWEEN:

DR EVANS WOHEREM

.....

PLAINTIFF

AND

SARAH HOMES LIMITED

.....

DEFENDANT

JUDGMENT

By a motion on notice No M/4991/2020 filed on 27th day of January 2020 the Applicant seeks:

1. An order of this Honourable Court entering judgment in favour of the Plaintiff/Applicant in terms of its Further Amended Statement of Claim dated 16th day of December 2019.
2. And for such further order/orders as the Honourable court may deem fit to make in the circumstances of this case.

The application is supported by the Plaintiff's eight paragraph affidavit wherein he deposed inter alia that this suit was filed on the 6th of June 2013 and the Defendant was duly served immediately afterward in June 2013 with the originating processes and hearing notice.

That despite service of the Writ of Summons, Amended Statement of Claim and the Further Amended Statement of Claim and several hearing notices on

the Defendant for each occasion the matter was for hearing, that the Defendant has not filed a statement of defence or ever been represented by counsel or its staff in the suit.

That the time stipulated in the Rules of this Honourable court for the Defendant to file its defence has lapsed without same being filed.

That the Defendant has no defence to the suit.

In counsel's written address in support of the application Mr Ifeanyi Chukwu Ugwu-Anichi for the Plaintiff argued the sole issue:

“Whether the Plaintiff is entitled to judgment due to the default of the Defendants to file their defence almost one year after being served with the statement of claim.”

Placing reliance on Order 15 Rule 1 (2) and Order 21 Rule 9 of the Rules of this court, he urged the court to find in the Plaintiff's favour as Rules of court are not made for fun but to be obeyed. Further reliance was placed on **OFORKIRE V MADUKA (2003) 5 NWLR (PT 812) PG 166 AT 181 PARA C-D; A.S.T.C. V QUORUM CONSORTIUM LIMITED (2009) 9 NWLR (PT 1145) PG 1 AT 10 RATIO 7** per Muktar JSC; **GE INTERNATIONAL (NIGERIA) LIMITED V. Q-OIL AND GAS SERVICES LIITED (2016) 10 NWLR (PT 1520) AT PAGE 304** per Ngwuta JSC.

Order 15 Rule 1 (2) of the Rules of this court provides inter alia:

“A defendant shall file his statement of defence, set off or counterclaim, if any not later than 21 days after service on him of the originating process and accompanying documents...”

Order 21 Rule 9 of the Rules of this court provides:

“In all actions other than those in the preceding rules of this order, if the defendant makes default in filing a defence, the claimant may apply to

the court for judgment, and such judgment shall be given upon the statement of claim as the court shall consider the claimant to be entitled to.”

See also **GABBY STORES NIGERIA LTD V. ZACHARIAH J. MAGAJI & ANOR (2015) LPELR-40381 (CA) AT PAGE 15 PARA B-D.** Per Habeeb Adewale Olumuyiwa Abiru JCA:

“It is trite law that where a Defendant fails to file a statement of defence, he is deemed to have admitted the averments in the statement of claim and judgment may be entered against him in favour of the Plaintiff on the basis of the averments in the statement of claim – **AJIBADE V MAYOWA (1978) 9-10 SC 1, OKE V AIYEDUN (1986) 4 SC 61, OKEOBOR V POLICE COUNCIL (2003) 12 NWLR (PT 834) 444, MALLE V ABUBAKAR (2007) ALL FWLR (PT 360) 1569”**

In the instant case, it is on record that the Plaintiff’s Further Amended Statement of Claim dated 16th day of December 2019 and filed on the 18th day of December 2019 was served on the Defendant on 19th December 2019 at 3:03pm on one Foluke Ojimi, Secretary, Saraha Homes Ltd of Dubai – Abuja International Market, Kaura District, Abuja.

The Defendant, as at 2nd March 2021 when this motion for judgment was moved, had filed no statement of defence. Indeed since the inception of this case in 2013, despite the originating processes and hearing notices served on the Defendant, the Defendant only put up an appearance once by counsel, J. I. Esan on 1st July 2014 but never filed any processes.

On 2nd March 2021 when Mr Ifeanyichukwu Ugwu-Anichi moved his motion, he prayed to abandon reliefs 22 (b), (c) and (e) in the main reliefs and reliefs 22

(b), (c) and (e) in the alternative reliefs to enable him proceed with reliefs 22 (a) and (d) in the main reliefs and reliefs 22 (a) and (d) in the alternative reliefs.

The court granted his application therefore in the Further Amended Statement of Claim before the court filed on 18th December 2019, the Plaintiff seeks against the Defendant as follows:

“a) The combined sum of ~~₦~~12,037,000.00 representing various heads of payment that the Defendant received from the Plaintiff for the purchase of Block A50, Shelterview Estate, Wumba, Abuja.

d) 10% interest on ... relief (a) from the date of judgment to the date of full liquidation of the entire judgment sum and accrued interest.

OR, IN THE ALTERNATIVE

a) The sum of ~~₦~~10,000,000.00 being money the Plaintiff paid to the 1st Defendant as full and final payment for Block A50, Shelterview Estate, Wumba, Abuja.

d) 10% interest on ... relief (a) from the date of judgment to the date of full liquidation of the entire judgment sum and accrued interest.”

In the Plaintiff’s Further Amended Statement of Claim it was averred inter alia that the Defendant is an Estate Development and Real Estate Company which held itself out to be responsible for the development and sale of properties in Shelterview Estate, Wumba, Abuja to members of the public including the Plaintiff.

That following an agreement with the Defendants the Plaintiff paid a combined sum of ~~₦~~12,037,000.00 to the Defendant and was allocated Plot A50 in the said estate (see documents frontloaded). He was given possession of the plot

and he proceeded to develop the Plot to 95% completion when Shelterview and Investment Nigeria Limited (erstwhile 1st Defendant) invaded the plot and stopped him from continuing work as they had not received any money from the Defendant nor the Plaintiff for the plot, and that there was a pending law suit between the Shelterview and Investment Nigeria Ltd and the Defendant, and an injunction restraining the Defendant from selling the property, which the Defendant ignored and purported afterwards to sell the plot to the Plaintiff.

The Plaintiff, upon confirming the claims of Shelterview and Investment Nigeria Ltd, and to avoid the risk of losing the structure he had erected on the property, was compelled to enter into negotiation with Shelterview and Investment Nigeria Ltd to regularise his position.

The Plaintiff consequently paid ₦10,000,000 as full and final payment for the plot for which he had hitherto paid the Defendant the combined sum of ₦12,037,000.00 which sum the Shelterview and Investment Nigeria Ltd allegedly never received from the Defendant .

The Plaintiff further averred that he would not have paid the combined sum of ₦12,037,000.00 to the Defendant for the said Plot A50 or any other plot in the estate if he had known there was a pending lawsuit between the Shelterview and Investment Nigeria Ltd and the Defendant, nor would he have paid ₦10,000,000 to the Shelterview and Investment Nigeria Ltd if the Defendant had amicably resolved its differences with Shelterview and Investment Nigeria Ltd.

The Plaintiff filed a written statement on oath in support of the Further Amended Statement of Claim.

The Defendant having not filed a statement of defence within the 21 days allowed by the Rules of court and the court being satisfied that the Plaintiff's Further Amended Statement of Claim proves his claim, I hereby enter judgment in favour of the Plaintiff for the sum of ~~N~~12,037,000.00 representing various heads of payments that the Defendant received from the Plaintiff for the purchase of Block A50, Shelterview Estate, Wumba, Abuja.

Pursuant to Order 39 Rule 4 of the Rules of this court I award 10% post judgment interest per annum on the judgment sum from today until the judgment sum is fully liquidated.

Ugwu-Anichi: As costs follow events, we shall be asking for ~~N~~500,000 costs. Our clients have been put to legal expense for the past 8 years. A little palliative will further help assuage these difficulties the Plaintiff has gone through with the Defendant.

Court: This matter has been in court since 2013. I assess costs of this suit at ~~N~~150,000 in favour of the Plaintiff against the Defendant.

Hon. Judge