

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY IN THE
ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON 21ST DAY OF JUNE, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS
SUIT NO: FCT/HC/CV/3425/20

BETWEEN:

PRIME BUILDERS LIMITEDCLAIMANT

AND

ABUBAKAR ABDU MUHAMMED.....DEFENDANT

JUDGEMENT

This writ is brought under the undefended list dated the 4th of December, 2020 and filed on the 14th December, 2020 wherein claimant claims:

- (1) A declaration that by virtue of land transaction entered into between the claimant and the defendant in respect of plot 432, Cadastral Zone Bo6, Mabushi District, Abuja the claimant is entitled to be paid by the Defendant the full purchase price thereof in the sum of N25,000, 000.00 only.*
- (2) A declaration that the claimant is entitled to be paid the sum of N5,000,000.00 only by the defendant being outstanding of purchase price of her plot of land known and described as plot*

432, cadastral zone Bo6, Mabushi District Abuja purchased by the defendant sometimes in the year 2016.

- (3) An Order of this Hon. Court directing the defendant to fore with pay the claimant the sum of N5,000.00 only being outstanding balance of the purchase price in respect of plot 432, Cadastral zone B06, Mabushi District, Abuja sold to the defendant by the claimant.*
- (4) And for such further order(s) as this Honourable court may deem fit to make in the circumstance. Attached to this writ are an affidavit in support deposed to by one Shehu Ottman, principal officer of the claimant and four exhibits marked exhibit 1-4.*

Facts as deposed to in the affidavit in support are as follows:

That the claimant agreed to sell to the defendant her landed property known as plot 432, Cadastral zone B06, Mabushi District Abuja for the sum of N25,000,000.00.

That at the time, the certificate of Occupancy in respect of the landed property was being processed by the claimant the claimant handed over the originating copy of the offer of terms of grant conveyance of approval of statutory right of occupancy in respect of the landed property with the promises to convey the C. of O. when it was processed.

That the Defendant paid to the claimant the sum of N20, 000,000.00 with the promise to pay the balance on receipt of the said C. of O. On receiving the certificate of Occupancy the claimant has written severally to the

defendant to pay up the balance and Defendant has replied with assurances and acknowledged his indebtedness but has not paid the balance of N5, 000,000.00.

The Defendant counsel an appearance to be entered on his behalf and filed his notice of intention to defend and filed on the 22/3/21. Wherein he averred among other things that the claimant are not the original allottee of plot 432 Cadastral zone, B06, Mabushi District, Abuja.

That the Original allottee Zakori Ibrahim by an Irrevocable Power of Attorney dated 29 April, 1999 appointed Wilfred A Okafor as his lawful attorney over plot 432, Cadastral Zone B06, Mabushi District, Abuja.

That the C. of O. over the land came out in the name of WILFRED A. OKAFOR.

That the claimant has to register the power of Attorney between WILFRED A. OKOFOR and the claimant between the claimant and the defendant at the land registry before total can pass to the defendant.

Whereas the claimant stated that she became the title holder while the documents she relied upon have not been registered at the appropriate offices at the land Registry FCT Abuja Attached to this Notice of intention to defend are 5 exhibit marked as exhibit A-E.

The claimant filed a further affidavit in support of their case dated and filed on the 26/3/21 wherein deponent One REGINA OCHAI the litigation Secretary in the law firm of counsel to claimant deposed among other

things that there was only one over condition attached to the payment of the balance of purchase price of 5m to the claimant and which is that the claimant shall ensure the issuance and collection of the C. of O. of the said land.

That the defendant did not transact with WILFRED A. OKAFOR over the land in question or Zakari Ibrahim rather he transacted with the claimant.

That the Defendant has developed the said land with a massive residential accommodation without hindrance or disturbance from anybody but has blankly refused to pay up the balance of the purchase price of the land. The undefended list Speak procedure does not admit of filing of further and better affidavit because in placing the suit on the undefended list for hearing it is only the averments in the affidavit filed in support of the claim stating the ground upon which the claim is based that the trial court has to examine. See In **REMARKETS (NIG) (NIG) LTD & ANOR VS. UNITY BANK PLC (2010) LPELR-4328 CA PER BAIABA JCA (PP 8-11 PARAGRAPH F.** stated thatOrder 23 did not suggest in any favour that the Plaintiff has a right to file a further and better after lift or the defendant had filed his notice of intention to defended together with an affidavit disclosing his deference.

This is because the affidavit in support of the claim is the one to disclose the grounds upon which the claim is based and it is incumbent on the Plaintiff to set forth the grounds of claim. In **ENYE VS. OGBU (2003) 10**

NWLR PART 828 PAGE 403, it was held that in an action or the undefended list, where the decision whether to place the action on the undefended listno additional document can be filed in addition to those that accompanied the application and, on which decision about placement was made. See also **NPA VS. AMINU FLRALOU & CO & ANOR (2018) SC AND SULAIMAN VS. UAC OF NIG PLC (2002) CA**. The court should therefore place no reliance on the further affidavit in support filed by the claimant and strike out same.

From the above junction authorizes cited above I need to strictly complied with the same consequently the further and better affidavit filed by the claimant dated the 26/3/21 is hereby struck out. I put no reliance on the same. I now critically looked at the writ filed with accompanied affidavit and the exhibits attached and the notice of intention to defend filed by the defendant on the exhibits attached. The undefended list is provided by order 35 of the HC of the FCT CPR 2018. Which provides “Where an application is made to issue a writ of summons in respect of a claim to recover a debt or liquidate money demand supported by an affidavit stating the grounds on which the claim is based, and stating that in the deponents belief there is no defence to court, the judge in Chamber shall enter the suit for hearing in what shall be called the undefended list” the guiding principles of law governing the undefended list procedure have seen enunciated in a number of decision of the courts for intake in **ATACUBA AND CO VS. GURA BIG LTD (2005) 8 NWLR (PT 927) P. 429 @ 448**. The section held that one of

the main problems that often arises in the undefended list procedure is the consideration of whether the defendant affidavit in support of the Notice of intention to defend discloses a defence on merit.

In this regard it must disclose a prima facie defence. The affidavit must not contain merely a general statement that the defendant has a good defence to the action. It is sufficient if the affidavit disclose.

- (a) A tribal issue or that a difficult part of law is involved.*
- (b) That there is a dispute as to the fact which ought to be tried.*
- (c) That there is real dispute as to the amount due which requires the taking account to determine. Or.*
- (d) Any other circumstances showing reasonable grounds of a bonafide defence see **SCIRROCCO INTL LTD VS. UNITY BANK PLC (2016) LPELR 40265 CA.***

In the case before this court the defendant in his notice of intention to defend has stated that the claimant is not the tile holding of the land sold to the defendant see paragraphs 4i,J, K, L of the defendant notice of intention to defend. Would this constitute a triable issues going by the above decisions of the section and the/ Counter affidavit. The case before the court is the one of Seafied performance not an issue of tile it was the same defendant in his notice of intention to defender who admitted paying the sum of 20, million to the claimant about 4years ago why can he raised the issue of title then.

The corresponds as exhibit which emulated from the claimant counsel to the defendants counsel was clear admission made by the defendant consequently this action is properly brought before this court.

The writ was not marked "undefended list" this is a more a regularity which can be waived although they raised it having filed rid to that irregularity.

From the facts and circumstances of this case the defendant have no deference at all? This can be seen from the entire notice of intention to defuse filed by the defendant and the exhibits attached thereto. It is helpful to always remember that technical justices are no justice at all, and a court of law should distal itself. Courts of law should not be unduly tied down by technical. Particularly where no miscarriage of justice would be occasioned. Justice can only be done in substantial and not by impending it with mere technical procedure irregularity that occasion no miscarriage of justice. Where the facts are glaringly clear, the court should ignore mere technicalities in order to do substantial justice. See **AKAN VS. BOS (2010) 17 NWLR (PT 1223) 421.**

See also **FAMFA OIL LTD VS. A. G. FEDERATION (2013) 18 NWLR (PT 852) PAGE 453.** This is case of Specific performance the affidavit attached to the application and the notice of intention to defunds clearly demonstrated.

That although the defendant raised some issue or facts in his defence that would not denied the court from delivery justice consequently judgment is hereby entered in favour of the Plaintiff against the defendant the defendant shall pay the outstanding sum of N5million to the defendant.

Signed
Hon. Judge
16/6/2021