



IN THE HIGH COURT OF JUSTICE
IN THE FEDERAL CAPITAL TERRITORY, ABUJA

HOLDEN AT WUSE ZONE 2, ABUJA

BEFORE HON. JUSTICE NJIDEKA K. NWOSU-IHEME

ON WEDNESDAY, 19th DAY OF APRIL, 2023

SUIT NO: FCT/HC/CV/300/2022

BETWEEN:

CHIDUBEM EZUMBA

CLAIMANT

VS

- 1. BAZZA CONSTRUCTION CO. LTD**
- 2. BAZZA MOTORS LIMITED**
- 3. RYCHADO HOMES LTD**

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DEFENDANTS

JUDGEMENT

By writ of summons under the undefended list dated and filed 7/11/2022, the claimant is claiming against the defendants as follows:

1. AN ORDER of this Honourable Court that the claimant is entitled to the sum of **N35, 000,000.00 (THIRTY FIVE MILLION NAIRA)** being refunds arising from the monies earlier paid by the claimant to the defendants relating to the purchase/development of all that property known and called **PLOT NO. 21, RYCHADO HOMES ESTATE. PLOT 1564 CADASTRAL ZONE A09, GUZAPE DISTRICT FCT, ABUJA** which sum was conclusively agreed upon in the payment agreement made and entered between the claimant and the defendants.
2. AN ORDER of this Honourable Court directing the defendants to pay to the claimant the sum of **N35,000,000.00 00 (THIRTY FIVE MILLION NAIRA)** being refunds arising from the monies earlier paid by the claimant to the defendants relating to the purchase/development of all that property known and called **PLOT NO. 21, RYCHADO HOMES ESTATE. PLOT 1564 CADASTRAL ZONE A09, GUZAPE DISTRICT FCT, ABUJA** which sum was

conclusively agreed upon in the payment agreement made and entered between the Claimant and the 1st defendant on 1/09/2022 and which sum has remained unpaid despite demands.

3. The claimant claims 20% interest on the above stated sum per month, from the date payment of the sum was due according to Payment Agreement of 1/09/2022, until the judgement sum is liquidated.
4. AN ORDER of this Honourable Court directing the defendants to pay to the claimant associated cost to the tune of N5,000,000.00, in tandem with Clause 2, Page 3 of the payment agreement.
5. The cost of Action and for such further orders as this honourable court may deem fit to make in the circumstances.

In support of this application is a 23 paragraph affidavit deposed to by EZEKWESIRI IMO the lawful attorney to the claimant. Annexed to the writ are 12 exhibits:

- Exhibit A1, Power of Attorney between claimant and his lawful attorney.
- Exhibit A2, Letter of allocation issued by 3rd defendant in favour of claimant dated 4/10/2021.
- Exhibit A3, Power of Attorney executed by 1st defendant in favour of claimant dated 4/10/2021.
- Exhibit A4, Deed of Assignment executed by 1st defendant in favour of claimant dated 4/10/2021.
- Exhibit A5, Letter of demand from claimant's solicitor to the 2nd defendants dated 11/08/2022.
- Exhibit A6, Letter of demand from claimant's solicitor to the 3rd defendants dated 11/08/2022.
- Exhibit A7 Reply to the letter of demand from 2nd defendant's solicitor to the claimant through claimant's solicitor dated 16/08/2022.
- Exhibit A8 Payment Agreement between 1st defendant and claimant dated 1/09/2022.

- Exhibit A9, Letter of reminder from the claimant's solicitor to the 1st defendant dated 4/10/2022.
- Exhibit A10, Final letter of demand and pre-action notice from the claimant's solicitor to the 1st defendant dated 13/10/2022.
- Exhibit A11, Final letter of demand and pre-action notice from the claimant's solicitor to the 3rd defendant dated 14/10/2022.

The 1st and 2nd defendants filed a notice of intention to defend on the 5/12/2022. In support of the notice of intention to defend is an affidavit disclosing a defence on the merit dated the 5/12/2022 and filed same day. The 1st and 2nd defendants filed a further affidavit of 7 paragraphs on 7/02/2023 attached to the further affidavit are the following exhibits:

- Exhibit A– GTB Transaction receipt for N15, 000,000.00.
- Exhibit B – Zenith Bank Transfer Receipt N15, 000,000.00.
- Exhibit C – Zenith Bank Transfer Receipt N15, 000,000.00.

The 3rd defendant filed a notice of intention to defend on 7/2/2023. In support of the notice of intention to defend is a 20 paragraph affidavit disclosing a defence and a written address in support.

Claimant filed an 8 paragraph counter affidavit on 6/2/2023 against 1st and 2nd defendant's notice of intention to defend dated 5/12/2022 and a written address in support.

On the 13/3/2023, the matter came up for hearing with counsels for the respective parties argued their applications.

The pertinent question I consider germane to this suit is:

'Has the claimant established his case to entitle him to judgement under the undefended list?'

It behoves on the court to consider the claimants claim vis-a-vis the defendants notice of intention to defend. It was held in ***JOLABON INV. (NIG) LTD V OYUS INTERNATIONAL CO. LTD (2015) 18 NWLR (PT.1490) 30 @ P.42*** as follows: "The essence of the undefended list procedure is to enable a plaintiff obtain summary judgement without trial in cases where the plaintiff's case is unassailable and the defendant

cannot show a defence which will lead to a trial on the merit.” The Court held further thus: “what the trial court in an undefended list matter is required to do is to consider the affidavits and decide whether the defence discloses a defence on the merit. It is where conflict exists on “fundamental facts” that the defendant is to be let in to defend and the case is transferred to the ordinary cause list.”

The Court went further to hold that a trial court in an undefended list matter is to consider the processes filed including the affidavit in support of the notice of intention to defend before arriving at the conclusion that a defence on the merit/legal defence was or was not made out. The trial court is to scrutinize the affidavit in support of the Notice of Intention to Defend as well as the exhibit(s) annexed thereto. See also **Nishizawa v Zethwani (1984) 12 SC 234.**

In the case at hand, the 1st and 2nd defendants in the affidavit disclosing a defence on the merit admitted that money was collected from the claimant. See paragraphs 3(a), (b)& (c) reproduced below:

- (a) That sometimes in the year 2021, the 1st defendant, Bazza Construction Company Ltd acted as authorized agent to the 3rd defendant, Rychado Homes in respect of his property at Guzape district, FCT Abuja.
- (b) That the property which was quoted for N35, 000,000.00 only was eventually sold to the claimant herein at the rate of N29, 000,000.00 only.
- (c) That consequent upon the above, the letter of Allocation of Plot 21, in respect of 5bedroom fully detached duplex RychadoAso Classic Estate, plot 1564, Cadastral Zone A09, Guzape District, FCT Abuja was duly paid for and new Letter of Allocation, Power of Attorney, and Deed of Assignment attached to the claimant’s application as Exhibits A2, A3 and A4 respectively were issued and executed by the parties.

In the Further Affidavit in support of intention to defend paragraphs 4(a), (b) (c)& (h)they stated thus:

- (a) That the 2nd defendant knew MrChinedumEzumba, the claimant by proxy through Mrs. NdidiEmefieleEzumba who presented to the defendants that the claimant is her brother.

- (b) That the said Mrs.NdidiEmefieleEzumba, did not only bought or subscribed plot 15 of the Rychado Estate, she also acted as agent of the claimant with regards to plot 21 of Rychado Homes which is the subject matter of this suit; she equally paid the agreed sum on behalf of the claimant.
- (c) That pursuant to the discussion and the demand for the refund of the monies in respect of the plot no. 21 and 15, the 2nd defendant via the 3rd defendants had started making the refunds and had paid forty-one Million Naira (N41, 000,000), already via the account details; contained in paragraph 1 of the Payment Agreement dated 1/09/2022 provided by the claimants counsel, attached as Exhibit A8; via the bank transfers in four installments: N15,000,000 and N10,000,000.00 respectively. Evidence of the said payments by the 2nd defendant is hereby attached as ExhibitsBazza A, B and C, ...
- (d) That the property was quoted for thirty-five million naira, was eventually sold to the claimant herein at the rate of Twenty-Nine Million Naira only, which joint refund, the defendants have started making to the tune of 41 million Naira already, leaving the balance of 17 million Naira to complete the joint payment in respect of plots 15 and 21 respectively before this suit was erroneously issued.Underlining are mine

The case of the 3rd defendant on the other hand from the affidavit in support of the notice of intention to defend:

- (a) That sometimes in 2021 the 1st defendant purchased Plot 1564 Cadastral Zone A09, Guzape District, FCT, Abuja from our company and letter of allocation was given to him.
- (b) I know that the 1st Defendant was beneficial owner of the land in question.
- (c) That I know my company did not transact directly or indirectly to my knowledge with the applicant to warrant being mentioned as a party in this suit.

During hearing of the matter, counsel to the claimant, Precious Oriaku admitted thus:

"What is outstanding to be paid to claimant is N17m. Paragraph 4h of the 1st and 2nd defendants further affidavit. We urge court to enter judgement in favour of claimant in outstanding sum of N17m. Sums he is alleging are not in dispute. We abandon relief 4."

M. D. Agada Esq. in opposition stated:

"Paragraph H of our affidavit our admission is to extent that money received from claimant was 29m which is in tune with paragraph C of their counter-affidavit. The issue of 17m balance was for 2 plots 15 & 21 respectively. To that extent we have no issue.

The application is contentious, amounts contradictory, incoherent and inconsistent using all exhibits attached by claimant and cannot be a liquidated money demand we pray court put matter on general cause list relief 4 particularly which they intend to withdraw which required specific proof.

Emphasis and underlining mine

In Paragraph C of the Counter affidavit claimant stated thus:

In reaction to paragraph 3b of the affidavit in support of the notice of intention to defend, the claimant paid the said N29,000,000.00 for the property as well as other sundry expenses he made in respect of the land summing up to the tune of N35,000,000.00.

It is clear that both Claimant and 1st and 2nd defendants are in agreement that the amount outstanding is N17 million and this court was urged to enter judgment in the sum of N17 million.

The law is trite on facts admitted; it was held in ***NDUKWE V THE LEGAL PRACTITIONERS DISCIPLINARY COMMITTEE & ANOR (2007) LPELR- 1978(SC): "It is settled that what is admitted need no further proof"***. Per Ogbuagu, JSC (P.64, paras. C-D).

Therefore, the amount N17,000,000 (seventeen million naira only) having been admitted by both parties needs no further proof to be the judgment sum agreed upon by the parties.

Claimant counsel had withdrawn the relief 4 which is a prayer is seeking defendants to pay to the claimant associated cost to the tune of N5,000,000.00, in tandem with Clause 2, Page 3 of the Payment Agreement.

M. D. Agada Esq. opposed this application to withdraw relief 4. However, it is trite that a party does not need to file a formal application to withdraw a relief, neither does he need the permission of the court to abandon a relief and the court cannot stop him from doing so. The party only needs to inform the court and it can be done orally. The relief would cease to be a part of the case. See ***FORBY ENGINEERING CO LTD V ASSET MANAGEMENT CORPORATION NIG. LTD (2018) LPLER-43861 Per MOHAMMED LAWAL GARBA ,JCA (as he then was)(Pp. 56-57, paras. A-D) held;***

"The Appellants' Counsel has not referred to any rule of the trial Court, (because none exists) which says that a party cannot at any stage of the proceedings of a case, abandon or withdraw any of the reliefs sought on the originating processes, orally, irrespective of the nature of such reliefs; declaratory or executory. No judicial authority was also cited in support of the argument that a party has to file a formal application to enable him withdraw or abandon any reliefs of whatever nature, he claims in his action before the court would allow him to do so. It is absurd to say that a party cannot at any time in the course of the proceedings of his case, orally notify or inform the court of his withdrawal or abandonment of any of the reliefs he sought from the court against the defendant(s) in the originating processes merely because the reliefs are declaratory. As the owner or one who seeks or prays for the grant of the reliefs sought in an action, a party requires no permission or leave of Court to withdraw or abandon any of the reliefs and the court cannot stop the party from so doing, but for record purposes, has the duty to duly notify or inform the court of the withdrawal or abandonment to enable it know the extant reliefs sought in the action so as to avoid granting reliefs not sought, for being abandoned or withdrawn. The oral notification of the withdrawal of some of reliefs sought by the respondent in the writ and statement of claim did not, under any rule of the trial Court or principle of law, call for or warrant a formal amendment of the said writ and statement of claim before it could be granted and taking effect."

See also ***STANDARD NIG. ENGINEERING CO. LTD V NIGERIAN BANK FOR COMMERCE & INDUSTRY (2006) 7NWLR PART 978 PAGE 198.***

Relief 4 is hereby withdrawn and struck out.

The Claimant under relief 3 is praying for 20% interest on the above stated sum per month, from the date payment of the sum was due according to Payment Agreement of 1/09/2022, until the judgment sum is liquidated.

It was held in ***THE SHELL PETROLEUM DEVELOPMENT OF NIGERIA LIMITED V ARHO-JOE NIGERIA LIMITED (2005) LPELR-7556(CA)*** thus: "Now, a claim under the undefended list is by its very nature an action for a liquidated sum, which is an amount precisely determined or ascertained from their terms of agreement and it is designed to enable a plaintiff obtain summary judgment without necessarily proceeding to trial..... Per Augie, JCA (as she then was) (pp.8-9,paras.F-E).

The 20% interest is not easily ascertainable nor precisely determined and thus ought not be granted under the undefended list procedure and is hereby refused and I so hold.

In respect of the 10% post judgment sum; in ***ALHAJI SULEIMAN MODIBBO V ALHAJI DANJUMA HAMMANJODA (2014) LPELR 24184 (CA)*** it was stated as follows: "The 10% interest awarded by the lower court is a post judgment interest and falls within the powers conferred upon the court by the above provision to award at its discretion. The court is therefore clothed with jurisdiction to award the 10% post judgment interest. See ***Lamurde Local Govt v Karka (2010) 10 NWLR (Pt 1203) 574 at 585*** where My Lord Yahaya JCA stated thus: it is plain, that the trial judge was well within the legal parameters in awarding the 10% interest on the judgment sum. Not only was the interest prayed for in the statement of claim, but the rules of court also empower the trial judge to make the award." Per Jauro JCA.

I hereby hold that the claimant is entitled to 10% post judgment interest.

I hereby enter Judgment in part infavour of the claimant and order as follows:

- (a) The defendants should forthwith pay the claimant the sum of N17,000,000.00.
- (b) The defendants are to pay 10% post judgment sum from the day of judgment till the judgment sum is fully liquidated.

HON. JUSTICE NJIDEKA K. NWOSU- IHEME
[JUDGE]

Appearance:

1. Precious Oriaku for the claimant, claimant's lawful attorney present.
2. M. D. Agada for the 1st and 2nd defendants.