

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

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 13
CASE NUMBER : SUIT NO: CV/074/2023
DATE: : THURSDAY 23RD JANUARY, 2025

BETWEEN:

JIBRIN BAFFA ABDULKADIR CLAIMANT

AND

1. KANIZ CONSTRUCTION LTD. } DEFENDANTS.
2. DARE OSUNKOJO } }

JUDGMENT

The Plaintiff's claim against the Defendant is to recover a debt and a liquidated money demand as follows:

1. The sum of N13,500,000.00 (Thirteen Million Five Hundred Thousand Naira) only.
2. Cost of action in the sum of N2,500,000.00 (Two Million Five Hundred Thousand Naira) only.

The Writ is supported by a 29 paragraph affidavit deposed to by Jibrin Baffa Abdulkadir, The Claimant in this suit. It is the averment of the Claimant, that he went to the office of the Defendants and met the 2nd Defendant sometime in January, 2022, where he indicated interest to buy an apartment of three bedroom terrace duplex with one room boys quarters (pre-finished) in which he filled a form for the subscription of the house.

That the Defendants agreed to finish building his house within a period of 2 years from the date he subscribed for the House.

That upon filling the said form of interest, he instantly transferred the sum of (N500,000.00) Five Hundred Thousand Naira only into

the account of the 1st Defendant with the following details as a commitment fee:

Account Name: Kaniz Construction Limited

Account No: 1014978974

Bank: Zenith Bank.

The copy of both the receipt of payment dated the 22nd day of November, 2021 issued to him by the 2nd Defendant and the copy of the Bank Statements transfer evidencing the payments are hereby annexed and marked as Exhibits "A1" and "A2" respectively.

That the 2nd Defendant offered him a letter of allocation for the said three bedroom terrace duplex with one room boys quarters (pre-finished) with House No. 526C at Kaniz Homes Estate, Karsana North District Cadastral Zone Abuja at the price of N23,500,000.00 (Twenty Three Million, Five Hundred Thousand Naira) only. The copy of the said letter of Allocation dated the 19th day January, 2022 is hereby annexed and marked Exhibit "B".

That upon receiving the said Letter of Allocation dated the 19th day January, 2022, he instantly deposited the sum of

N4,000,000.00 (Four Million Naira) only into the account of the 1st Defendant with the following details:

Account Name: Kaniz Construction Limited

Account No: 1014978974

Bank: Zenith Bank.

The copy of the receipt of payment dated the 20th day of January, 2022 issued to him by the 2nd Defendant and the copy of the Bank statement for the transfer evidencing the transfer are hereby annexed and marked as Exhibits "C1" and "C2".

That he subsequently made another deposit of the sum of N9,000,000.00 (Nine Million Naira) only into the 1st Defendant account with the following details:

Account Name: Kaniz Construction Limited

Account No: 1014978974

Bank: Zenith Bank.

Both the copy of the receipt of the said payment dated 28th day of January, 2023 issue to him by the 2nd Defendant and the copy of the Bank Statement evidencing such payment are hereby annexed and marked as Exhibits "D1" and "D2" respectively.

That the Defendants after receiving the deposits of payment summing to the tune of N13,500,000.00 (Thirteen Million Five Hundred Thousand Naira only) for the three bedroom terrace duplex with one room boys quarters with House No. 526C at the 1st Defendant Estate, Karsana North District Cadastral Zone Dos Abuja purported another offer for sale of 1 unit of three bedroom terrace duplex (carcass) at the 1st Defendant Estate, Karsana North District Abuja with different Plot No. 186 to the tune of N26,500,000.00 (Twenty Six Million Five Hundred Thousand Naira) only. The copy of the said letter dated the 25th day of August, 2023 is hereby annexed and marked as Exhibit "E".

That the Defendants up-till this moment did not commence the project of building the House as contained in the agreement.

That he was also shocked and astonished by another purported letter of provisional allocation issued to him by the 2nd Defendant bearing his signature for the sale of another three bedroom terrace duplex with BQ (carcass) at the 1st Defendant Estate bearing plot No. 526B. The copy of the said letter of provisional allocation dated 19th day of September, 2023 is hereby annexed and marked as Exhibit "F".

That the offer of provisional allocation he applied to the 1st and 2nd Defendants is three bedroom terrace duplex with one room boys quarters with Plot No. 526C not the three bedroom terrace duplex with one room boy's quarters with Plot No. 186 and Plot No. 526B respectively.

That he later notified the 2nd Defendant that his balance of payment for the said three bedroom terrace duplex with one room boys quarters with Plot No. 526C is the sum of N10,000,000 (Ten Million Naira only).

That it was after series of complaints, the Defendants issued and or allocated a new House to him at a higher price with different specification without his consent.

That the 2nd Defendant insisted that he must accept the offer of provisional allocation dated 19th September, 2023 bearing three bedroom terrace duplex with one room boys quarters (carcass) with Plot No. 526B pricing to the tune of N26,500,000 (Twenty Six Million Five Hundred Thousand Naira) only.

That upon failure for the Defendants to even start building the House for almost 2 years now made him to lose interest and indeed believed that they are not ready to deliver the House to him.

That he later declined interest to purchase the said 3 three bedroom terrace duplex with one room boys quarters with Plot No. 526C for lack of confidence and transparency from the 1st and 2nd Defendants. That the Defendants succeeded in collecting his money without having the zeal to embark on the project.

That the 1st and 2nd Defendants failed or neglected to refund his money that he deposited with them to the tune of (N13,500,000.00) Thirteen Million Five Hundred Thousand Naira only, and that the Defendants are doing business with his money all this while without any lawful justification.

That upon failure by the 2nd Defendant to honor his simple instruction for refund of his money, he approached and briefed his solicitors about the details of what had actually transpired between him and the Defendants.

That upon hearing his brief, his solicitors wrote a demand notice to the 2nd Defendant demanding and instructing him to refund his initial deposit of payment in the sum of N13,500,000.00 (Thirteen Million Five Hundred Thousand Naira) only within 14 days or embark on a Court action against them under his instruction. The copy of the said Demand Notice dated 5th October, 2023 is hereby annexed and marked as Exhibit "G".

That the 1st and 2nd Defendants failed or neglected to react to the said Demand Notice dated the 5th day of October, 2023 till date.

That upon refusal by the 1st and 2nd Defendants to react or respond to his Demand Notice, he instructed his solicitor to institute this action in which he was charged the sum of N2,500,000.00 (Two Million Five Hundred Thousand Naira) only as legal fees.

That the Defendants are in breach of the agreement as contained on the letter of provisional allocation dated 19th day of January, 2022. That from the documents attached to this application he verily believes that the Defendants have no defence to this application.

That it will be in the best interest of justice to:-

- a. Enter judgment in favour of the Claimant for the sum of N13,500,000.00 (Thirteen Million Five Hundred Thousand Naira) only as the Defendant has no defence.
- b. Cost of action in the sum of N2,500,000.00 (Two Million Five Hundred Thousand Naira) only.

In line with procedure, written address was filed wherein counsel argued that the Claimant has presented a clear and cogent case to entitle him to judgment under the undefended list.

There are conditions and procedures to be followed by parties and court under the undefended list procedure. These laid down strict procedures have been adumbrated in the case of ***TRADE BANK PLC. VS. SPRING FIN. LTD. (2009) 12 N.W.L.R. (Pt. 1155) 369 at Pg. 384 - 385, Paras. F-B.***

Learned counsel insists, that the Claimant has satisfied this procedure. It is clear evidence that the Defendant does not have any defence.

Learned counsel submits, that the rules of this Honourable Court are sacrosanct on when the court can allow a party leave to defend. Order 35 Rule 3 of the High Court of the Federal Capital Territory (Civil Procedure) Rule 2018 provides that, the only defence upon to the party who intends to defend the suit must be on merit. The affidavit to defend must disclose a defence on merit, it is not every caricature the court will allow.

Learned counsel concludes by submitting firmly that the Claimant has done everything necessary and complete to attract the favour

of this honourable court to give judgment in this suit as claimed by the Claimant in the Writ of Summons.

On their part, Defendant filed notice of intention to defend dated 20th April, 2024.

The grounds upon which the notice is brought as are follows:

1. That reliefs B, C, and D as contained on the writ of summon are not claims for liquidated sum and should not be heard under undefended list procedure rather this is a matter wherein parties should give evidence for the court to determine the matter
2. The Claimant's endorsement on the writ of summons being challenged are:
 - B. The Sum of N5, 000,000:00 (Five Million Naira) Only as general Damages.
 - C. To grant 10% interest per annum from the date judgment is entered till full liquidation of judgment sum.
 - D. Cost of Action in the Sum of N2,500,000:00 (Two Million, Five Hundred Thousand) only

The Claimant's prayers as contained in Reliefs B, C and D are not for liquidated amount which are ascertainable and determinable without evidence being given in Court.

The application is supported by a 4 paragraph affidavit deposed to by Shola Adeagbo, General Manager in the Defendant's company. It is the deposition of the Defendant, that paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 of the Claimant's Affidavit in Support are false.

Contrary to paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 of the Affidavit in support of Writ of Summons, the Defendants state that from their record, the claimant is one of the subscribers to the Defendants' estate, who keyed into the scheme by making deposit for 3 Bedroom Terrace Duplex with one room Boys quarters (pre finished). The Claimant had paid the total Sum of N13, 500,000.00 (Thirteen Million, Five Hundred Thousand only) to the Defendants' accounts on or by January 2022 and a provisional Letter of Allocation was issued for the house. The provisional Letter of Allocation indicated that the total cost of the house was to be paid within 18 months; however the Claimant failed and neglected to make further payment towards the house for well over 18 months.

That overtime the cost of building materials and other necessary materials needed in the construction of houses skyrocketed for well over 300 percent in the Nigeria Economy, this necessitated the need for the Defendants to upwardly review the prices of the houses which are to be delivered to the Defendants' subscribers.

The astronomical rise in the cost of building material constitutes an intervening condition which frustrates the performance of the obligations which the Defendants have towards the Claimant, and it is impracticable and unjust for the Defendant to carry out their formal obligations in the contract having in mind the fact that the Claimant has made only N13,500,000.00 to the building and in order to minimize loss the Defendant approached each of its clients to negotiate a price variation for the contract. The Claimant did not agree to the price variation even when it was apparent in the face of the economy that the inflation has made the delivery at the previous prices impossible.

The Claimant is fully aware that the houses allocated (provisional) were to be built for the subscribers and possession will only be given after full payment has been made.

That the Claimant was not in any way deceived as to the fact that the defendant will show physical allocation only after 80% payment has been made of which the Claimant failed to fulfill.

That the parties did not agree that the money paid by the Claimant to the Defendant was ever going to be loan that requires the payment of interest of any kind. That the parties have no reason to make it a loan.

That the Claimant is not entitled to damages for the inability of the Defendants to perform the obligations of building the house as the circumstances are not within the power of the Defendant who had ongoing houses for the subscriber who is ready to pay the price dictated by the economic situation of the country.

That the Defendant has a defense to the claim of the Claimants.

That the Claimant is not entitled to the reliefs on the endorsement on the Writ as the Claimant.

That the Defendant will be prejudiced if the suit is not transferred to the general cause list and pleadings order for parties to ventilate their cases.

In line with procedure, written address was filed wherein two (2) issues were formulated for determination to-wit;

- 1. Whether the Claimant Applicant reliefs b, c, & d on the Endorsement qualified to be determined under the undefended list.***
- 2. Whether from the facts and circumstances of this case the Claimant/Applicant is entitled to judgment under the undefended list.***

On issue one, it is the contention of the Defendant/Respondent, that the reliefs of the Claimant does not qualify as one which should to be placed under the undefended list procedure by the Court. The Procedure of the Undefended List is particularly intended for money debts or money Demand nothing more. Generally the matter is held on Affidavit evidence and the facts are based money had and received, it must be an amount determined and/or determinable. The procedure ought not to be extended to cover reliefs which should be under the general cause list. It is the Claimant's reliefs that determine the Jurisdiction of court to determine a matter. Jurisdiction is the threshold of competence of a court, a decision of a court which lacks jurisdiction is a nullity. The Claimant reliefs give competence or other wise to the Court.

The Claimant's reliefs though monetary in nature are not in any way liquidated. Order 35 of the High Court of FCT Civil procedure Rules 2018 make provision which enable a Plaintiff obtain summary judgment without trial, however the Judgment shall be in regard debt or money demand which the Defendant do not have a defense to. The Rules however did not foreclose the Defendant from having to challenge the case of the Plaintiff. Undefended List Procedure cannot be the plank upon which a Claimant would becloud the court to give judgment for a failed contract without first going into the nitty-gritty of the contract.

Learned counsel further submits, that safe for Relief A on the endorsement of the Claimant, this court should hold that the matter in contention does not qualify under the undefended list procedure, that the civil procedure of undefended is not intended to shut out a defendant who can show that there is a triable issue. In the instant case, the triable issue exist which is a defense to the Claimant case as a whole.

Learned counsel submits, that this Court cannot give Judgment in regards an amount not contemplated by the parties without having held evidence. The relief claimed in the Claimant's application is for N5, 000,000.00 (Five Million Naira only), as

general damage is not supported by evidence, the amount is unfounded, preposterous and unascertainable from the Affidavit before the court.

It is trite that in considering whether an affidavit of a Defendant in an undefended list procedure disclose a Defense on the merit such must be giving a liberal approach the general practice is that the affidavit should clearly show that the ground for asking to be heard are not frivolous and/or craftily designed to frustrate proceedings, a defendant is not required to show that his defense was complete and likely to succeed. As a general principle where a Defendant sets out facts in his affidavit with material details showing that he has a fair case for defense or reasonable grounds for setting up a defense or even a fair probability that he has a bona fide defense then he ought to be granted leave to defend the action. ***MACGREGOR. V N.M.B (1996) 2 SCNJ 72AT 82;***

SANTORY CO VS. ELABED (1998)12 NWLR (579)534 at 544. were cited.

In answering **issue two**, the Defendant adopts his arguments in issue one above and contend that the facts as placed before the court by the Claimant cannot sustain Judgment under the

undefended list. The undefended list procedure relates to a claim for a debt or liquidated money demand. ***NKWO MARKET COMMUNITY BANK (NIG) LTD VS. PAUL EJIKEME UWABUCHI OBI (2010) 4-7 SC (PT 11) 30*** was cited.

Learned counsel submits, that the Defendants by their Affidavit in Support of notice of Intention to Defend raised issues which ought to be considered by the Court. That the Defendant has a triable defence which ought not to be discountenance.

Learned counsel concludes by urging this court to grant the Defendant leave to defend this matter by transferring the suit to the general cause. The defendant have a triable defence and this matter can be better determined after pleading have been filed.

COURT:-

I wish to observe that the Undefended List Procedure is a truncated form of ordinary civil hearing peculiar to our adversary system where the ordinary hearing is rendered unnecessarily due in the main to the absence of an issue to be tried or the quantum of Plaintiff's claim disputed to necessitate such a hearing. It is designed to quicken justice and avoid the injustice likely to occur where there is no genuine defence on the merits to the Plaintiff's case.

It is a procedure meant to shorten hearing of a suit where the claim is for liquidated money demand. See ***UBA PLC VS JARGABA (2007) 5 SC1.***

An action begun under the undefended list, is no less a trial between the parties and where a Defendant is properly served, he has a duty to disclose his defence to the action. ***ATAGUBA & CO. VS GURA (2005)2 SC (Pt. 11) 101.***

However, notice of intention supported by affidavit so filed must condescend to issues stated in affidavit in support of the claim of the Plaintiff. A mere empty affidavit in support of the Notice of Intention to defend which disclose no defence shall certainly not sway the Court into transferring the matter to general cause list for trial.

Simply put, the Defendant's affidavit must condescend upon particulars and should as far as possible, deal specifically with the Plaintiff's affidavit and state clearly and concisely what the defence is and what facts and document are relied on to support it.

Such affidavit in support of Notice of Intention to defend must of necessity disclose facts which will, at least throw some doubt on the Plaintiff's case.

A mere denial of Plaintiff's claim or liability or vague insinuation devoid of evidential value does not and will not suffice as facts, which will throw doubt on Plaintiff's claim. ***UBA PLC VS JARGABA (Supra).***

It is the law that for a claim to be heard under the undefended list, it must firstly be for a liquidated money demand, including account stated to cognizable under the undefended list procedure thus excluding for e.g unliquidated damages as in claim in Torts and special damages arising howbeit from any cause of action as they must be specially pleaded and proved strictly.

Secondly, the claim for a debt or liquidated money demand must be supported by an affidavit verifying the claim, and thirdly the affidavit must contain a deposition to the effect that in the belief of Plaintiff, Defendant does not have any defence to the claim.

See ***A.S.T.C. VS. QUORUM CONSORTIUM (2009) 9 NWLR (Pt. 1145).***

The general rule is that where the parties have embodied the terms of their agreement or contract in a written document as it was done in this case, extrinsic evidence is not admissible to add or vary, subtract from or contradict the terms of the written instrument.

See ***LAGARDE VS. PANALPINA WORLD TRANSPORT NIG. LTD (1996) 6 NWLR (Pt. 456) 544.***

The law is trite regarding the bindingness of terms of agreement on parties. Where parties enter into an agreement in writing, they are bound by the terms thereof.

This court, and indeed any other court will not allow anything to be read into such agreement, terms on which the parties were not in agreement or were not ad- idem.

See ***LARMIE VS. DATA PROCESSING MAINTENANCE & SERVICES (D.P.M.) LTD (2005) 12 SC (Pt. 1) 93 at 103.***

In deciding the terms of a contract or what was agreed by the parties, it is always better to look at all the documents passing between the parties and glean from them or from the conduct of the parties whether they were ad-idem on all material points or how they expected their relationship to be maintained.

Per RHODES VIVOUR CA in the case of ***DIAMOND BANK PLC VS. UGOCHUKWU (2008) 1 NWLR (Pt. 1067) 1 at pages 23 – 24 paragraphs H-A.***

The fulcrum of the Plaintiff's claims from the totality of evidence led before this Court is hinged on the alleged breach of a business agreement that he entered into with the defendants.

I shall for ease of reference reproduce paragraph.... of the Defendant's affidavit....which is seemingly a reason for breaching the terms of their agreement with the Plaintiff.

"...in order to minimize loss the Defendant approached each of its clients to negotiate a price variation for the contract. The Claimant did not agree to the price variation even when it was apparent in the face of the economy that the inflation has made the delivery at the previous prices impossible."

Defendant expressly admitted that the Plaintiff did not agree to the price variation. That is an admission against interest. See ***AKINOLA VS. OLUWO (1962) 1 SCNLR 352***

Poser.. Why then are they hesitating to refund the Plaintiff?

A party who obviously benefits from a given state of affairs, like the Defendant in this case, must not be allowed to shirk from its obligations.

This should not just be a matter of convenience, but I dare say a moral duty or obligation and a matter of conscience. Any agreement is useless if one party does not respect it. I won't say more.

Certainly speaking, The contents of Defendants' affidavit have clearly betrayed them.. Defendant is running from pillar to post and merely changing goal post to avoid allowing the goal into the net.

Defendant has no defence to the claim of Claimant.

I have not seen the issues fit to be tried that have been raised or any substantial question of facts which ought to be tried by full contest.

This is not a game of chess or draft, what the craftiest wins.

A Defendant who has no defence to the claim of Claimant shall not be allowed to dribble and cheat such a Claimant out of judgment.

That is exactly what the Defendant in this matter seeks to do.

On the whole, Claimant is deservedly entitled to judgment granting his reliefs.. Judgment is hereby entered in favour of Claimant, as follows;

1. The Defendant is hereby ordered to to pay Claimant sum of **N13,500,000.00 (Thirteen Million Five Hundred Thousand Naira)** only representing the total sum paid to the Defendant.
2. The sum of **N500,000.00 (Five Hundred Thousand Naira)** only is hereby awarded as cost.

***Justice Y. Halilu
Hon. Judge
23rd January, 2025***

APPEARANCES

Abubakar A.M., Esq. – for the Claimant.

F.B. Ayodele, Esq. – for the Defendants.