

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE GWAGWALADA DIVISION
HOLDEN AT COURT 12, JABI
BEFORE HIS LORDSHIP HON. JUSTICE A. S. ADEPOJU
ON THE 24TH DAY OF OCTOBER, 2024**

SUIT NO: CV/2052/2024

BETWEEN:

**1. MR. SODIQ FOLAWIYO AZEEZ
2. MR, DANIEL OFFIONG EDEM
(SUING THROUGH THEIR ATTORNEY
BARR. YETUNDE OLOWOYEYE)** } ----- **CLAIMANTS**

AND

MRS. JACINTA AIDEYAN ----- DEFENDANT

*S. M. JIMMY appears with IFEANYI C. KALU for the Claimant.
CHRISTIAN ANEKE ELOM for the Defendant, holding the brief of E. A. IGWE*

JUDGEMENT

The endorsement on the Undefended Writ of Summons dated 16th April, 2024, filed by the Claimant for the following claims:

1. An Order directing the Defendant to pay the sum of **N8,300,000 (Eight Million Three Hundred Thousand Naira)** only to the Claimant being the balance of **N10,000,000 (Ten Million Naira)** paid by the Claimants to the Defendant as consideration for purchase of land known as plot 3835, Lugbe1 Extension, Abuja, measuring about 1,000 square meter, which is voided for want of title and non-delivery of physical possession to the Claimants.

2. An Order directing the Defendant to pay the sum of **N300,000 (Three Hundred Thousand Naira)** paid to the Defendant as agency fee for purchase of land.
3. Interest on the sum of **N8,600,000 (Eight Million Six Hundred Thousand Naira)** at the rate of 15%, from the date of judgment until full payment of the judgment debt.

The case of the Claimant as contained in the 40 paragraphed affidavit of one **Yetunde Olowoyeye**, their attorney is that the Claimants reside in Canada and have contributed money in 2022 to buy plot number 3835, measuring about 1,000 square meters located at Lugbe from the Defendants at a sum of **N10,000,000 (Ten Million Naira)**. The money was said to have been paid in three tranches into the Defendant's personal account with GTB with the transfer slips marked as Exhibits 2, 3, and 4 through the company of the Attorney with the Whatsapp chat attached as Exhibit 4A. Upon receipt of the money, the title documents, exhibits A5 - A11 were handed over to the attorney and a Contract Sale with a Deed of Assignment, Exhibits A12 and A13 were prepared and taken to the Defendant for the purported vendor, one **Mr. Onyebanulor Iwegbue** to sign the documents while the Attorney to the Claimants also got the documents signed by the Claimants.

Throughout the period of the transaction, the attorney claimed that she never met the vendor of the property even when she demanded to see him. The Defendant told her that he is resident in Imo State and will not be able to come to Abuja and hence the power of attorney donated to the

Defendant. At the conclusion of the transaction, the Claimants detailed one **Akaninyene Edem Offiong**, the elder brother to the 2nd Claimant to go to the land with a view to arranging with an architect to provide them a building plan. On getting to the land, it was discovered that the land is seriously encumbered by some unknown persons digging around and claiming ownership. The Claimants on receiving the bad news got in touch with their Attorney who went to the land to see the situation. The Defendant was informed but he refused to come up with any solution. As a result, the Attorney on the instruction of the Claimants wrote for a refund of the money spent in acquiring the property, see Exhibit 14. The Defendant responded via Exhibit 15 that a good title without encumbrances was transferred and was not a magician to envisage or anticipate an encroachment on the land.

A complaint of criminal trespass was reported to the police against the person developing the land. The Defendant was invited by the police and was asked to produce the owner of the property and evidence of transfer of **N10,000,000 (Ten Million Naira)** to the said owner, but she could not. She pleaded with the police and the elder brother to the 2nd Claimant to retrieve the title document with a view to selling to another person and refunding the Claimant's money. The plea was not accepted by the elder brother of the 2nd Claimant who insisted on refund of the sum of **N10,000,000 (Ten Million Naira)** with other expenses such as legal and agency fee before the title document could be returned to the Defendant. The Defendant pleaded

to refund the money in tranches over a period of two months, and in less than two weeks of acceptance of the proposal, she paid a sum of **N1,700,000 (One Million Seven Hundred Thousand Naira)** to the Claimant on 14th April, 2023, see Exhibit 16. She also paid **N1,000,000 (One Million Naira)** as legal fee, **N300,000 (Three Hundred Thousand Naira)** as part of the agency fee, Exhibit 18, leaving a total balance of **N8,300,000 (Eight Million Three Hundred Thousand Naira)**. The Claimants' Attorney further claimed that the Defendant was unable to produce the purported assignor of the property, that as at the time of filing this suit, the land had been fully developed by the unknown person. The photograph of the development of the land is attached as Exhibit 19. The Claimants believe that the Defendant have no defense to this action.

The Defendant, on the other hand, filed a notice of intention to defend. Together with a 23-paragraph affidavit, she admitted collecting the sum of **N10,000,000 (Ten Million Naira)** from the Claimants. However, she said that the Claimant delayed in transferring the money in bulk. And as a result of the Federal Government's directive, the plot was revoked and reassigned to another company named the Seaman Global Limited. The Claimants' Attorney had a discussion with the developer of the plot and was asked to produce the documents handed over to her for a replacement of the land, measuring 600 square meter, but she refused and insisted that she paid for 1,200 square meter. That she pleaded with the Claimants' Attorney and their brother, to give the developer the documents and get the agreed

portion allocated to them but to no avail. She urged that this matter be transferred to the general cause list.

It is trite that in an action instituted under the provision of Section 35 of the High Court of FCT, Civil Procedure Rules (Undefended List), the duty of the Court is to consider the affidavit in support of the notice of intention to defend, to determine whether it discloses a defense on the merit or a triable issue. On what constitutes a triable issue for the purpose of undefended list procedure the Court of Appeal in the case of **EKYE DEVELOPMENT AREA V SAPELE BUILDER COMPANY NIGERIA LIMITED (2021) LPELR 54206 CA** held;

“In the case of SPD NIGERIA LIMITED V ARHO-JOE NIGERIA LIMITED (2006) 3 NWLR (PT. 960) 172 the Court of Appeal gives some guide as to what constitutes triable issue in a summary trial application as follows; A triable issue or a defense on the merits under the undefended list procedure is where a Defendant's affidavit in support of the notice of intention to defend is such that requires the plaintiff to explain certain matters with regard to his claim or throw some doubts in the plaintiff's claim. The Court held further relying on the case of UBA PLC & ORS V JAGARBA (2007) LPELR 3399 SC where the Apex Court held that the decision as to whether or not a defense under the undefended list procedure raises a triable issue does not depend so much on the discretion of the court, rather it involves the evaluation of the affidavit evidence before the court for it to determine whether or not a triable issue has been made out by the defense.”

Similarly, in the case of **OKOH V MORECAB FINANCE (NIG) LTD (2007) LPELR 2463 SC** cited by the Claimants' Counsel the Supreme Court held:

“In an action filed on the undefended list, where a Defendant wanted to defend the action, the only issue for consideration is whether the Defendant has disclosed a defense to justify transferring the matter to the general cause list or not.” – Per **Mustapha J.S.C.**

Flowing from the above judicial authorities, I have carefully considered the Defendant's affidavit in support of the notice of intention to defend and hold that there is no triable issue raised in the affidavit to warrant the matter being transferred to the general cause list. The defence raised by the Defendant, that Claimants did not pay for the plot on time lacks merit, as there is no proof that the payment for the plot was tied to any specific time or agreement by the parties.

Consequently, the Claimants' claim as contained in leg 1 and 2 of the reliefs sought succeed. Leg 3, the interest of 15% cannot succeed. It is an unliquidated money demand, no meant for the undefended list procedure. However, in accordance with the Rules of this court, the Claimant is only entitled to 10% interest on the Judgment sum from today until the entire sum is fully liquidated. Interest is hereby ordered as such.

SIGN

**HON. JUDGE
24/10/2024**