

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

BEFORE HIS LORDSHIP: HON. JUSTICE. H. MU’AZU

SUIT NO: FCT/HC/ CV/3713/2024

DELIVERED ON THE 08/05/2025

BETWEEN:

MR. ADEBOWALE A. ABIODUN.....CLAIMANT

AND

KANIZ CONSTRUCTION LIMITED.....DEFENDANT

RULING/JUDGMENT

The Claimant by a writ of summon brought under Order 35 of the Rules of this Hon. Court 2018 now Order 34 of the 2025 Rules approached this Hon. Court and sought for the following Reliefs:

- (1) *An Order mandating the Defendant to pay the sum of **₦20,050,000.00** (Twenty Million, Fifty Thousand Naira) only being the refund of payments made to the Defendant by the Claimant in pursuant to the agreement entered into by the Claimant and Defendant for the sale of a four-bedroom semi-detached duplex with boys quarters in the Defendant’s Estate situated at Kaniz Homes Estate, Karsana North District Cadastral Zone **D05**, Abuja.*
- (2) *21% interest on the Judgment sum per annum from the date the Judgment is given until the final amount is liquidated.*

(3) *The sum of **₦1,000,000.00** (One Million Naira) being the cost of this suit.*

In line with law and procedure, the writ was marked undefended by the Judge in the Chambers and a return date was fixed. Upon service, the Defendant filed it Notice of Intention to defend the action on the merit. Parties adopted their processes to give way to this Ruling.

The case of the Claimant before the Court is that he entered into a contract with the Defendant sometime in January 2022 for the purchase of four-bedroom semi-detached duplex with Boy's Quarters at Kaniz Homes Estate, Karsana North District, Cadastral Zone **D05**, Abuja for the total sum of **₦33,500,000** (Thirty-three Million, Five Hundred Thousand Naira only) and pursuant to the agreement, he paid the sum of **₦10,050,000** (Ten Million, Fifty Thousand Naira only) to the Defendant.

That after the payment, a letter of allocation was issued to him for house No. **363B** in the Estate. That shortly after, the Defendant demanded for additional **₦10,000,000** (Ten Million Naira) only which same was paid and another letter of allocation for house number 14A was issued to him.

The Claimant avers that he was informally informed in February, 2024, that the property which was offered to him at the cost of **₦33,500,000** which he had paid **₦20,050,000** now goes for **₦56,500,000**. And that on the above premises, he requested for refund of his money through a letter to the Defendant which, the Defendant promised to refund within 60 days but failed.

That it will be in the interest of justice to grant the relief sought by the Claimant. The following documents were annexed to writ to wit;

- (1) Cash receipt of payment**
- (2) Letter of allocation of House 363B**
- (3) Cash receipt of payment**
- (4) Letter of allocation of House No. 14A**
- (5) Notice of termination**
- (6) Response to Notice of termination**
- (7) Request for Refund**

Reacting to the writ under the undefended list procedure, the Defendant filed a Notice of intention to defend the action on merit and an affidavit disclosing defence on the merit. It is the affidavit evidence of the Defendant that the Claimant is one of the subscribers to the Defendant's estate, who keyed into the scheme by making deposit for 4 Bedroom semi-detached duplex with one room Boys Quarters and the total sum of **₦20,050,000.00** was paid to the Defendant by the Claimant.

That the astronomical rise in the cost of building materials constitute an intervening condition which frustrated the performance of the obligation which the Defendant has toward the Claimant and that, it is impracticable and unjust for the Defendant to carry out their formal obligation in the contract having in mind the fact that the Claimant have made payment of only **₦20,050,000.00**.

That the Claimant is not entitled to the reliefs sought.

On the part of Court, in *EJASCO GLOBAL INVESTMENT LTD VS. INIM (2015) LPELR 24278*. The Court of Appeal held that in proceedings brought on the undefended list procedure; the duty of the trial Court on the return date is to evaluate the affidavit evidence and determine if the Defendant who was served has filed a notice of intention to defend the action supported by an affidavit that condescends upon particulars in response to the Claimant's claim; has deposed to facts that at least, throw doubts on the Plaintiff's case. If the trial Court is of the view that the Defendant has disclosed triable issues, the matter would be transferred to the general cause list for hearing. If no real defence has been disclosed, the matter will be heard on the undefended list and Judgment entered in favour of the Claimant. See also *EKULA FARMS LTD VS. UNION BANK OF NIG. PLC (2006) 4 SC (Pt. 1)*.

In the instant case, the Defendant who was served with the process of the Court, filed it Notice of Intention to defend the action on the merit in line with law and procedure under Order 35 now 34 of the Rules of this Court.

A glance at the Notice of Intention to defend the action filed by the Defendant will reveal that same amount claimed by the Claimant was paid to the Defendant. It is admitted by the Defendant that indeed the Claimant has paid the sum of **₦20,050,000** to the Defendant and that the Defendant is unable to keep to the terms of the contract base on the cost of building materials in the market.

Indeed, the only duty of the Court on the return date is to determine whether the Notice of intention to defend the action accompanying affidavit discloses a defence on the merit.

This point is further buttressed by the Supreme Court in **BEN HOMES LTD VS. SEBI FURNITURE LTD (1989) 5 NWLR (Pt. 123) 523 at 529** as thus “The business of the Court on the return date in a matter placed under the undefended list is to ascertain if any notice of intention to defend has been filed and proceed to enter Judgment. If none has been filed. That is the issue presently faced by this Court. The claim is for an order for the Defendant to pay the Claimant his money in the sum of **₦20,050,000.00** only paid to the Defendant vide Exhibit A & C.

It is equally in evidence through Exhibit C that the Defendant promised to pay the Claimant the sum of **₦20,050,000** the subject matter of this suit within 60 days from 22/05/2024 but has failed to honour its promise. The claimed sum is thus due.

The law has remained very well settled to the effect that the essence of placing a matter on the undefended list, otherwise known as the summary Judgment procedure, as in the instant case, is that such matters which border on liquidated money demand must be quickly dealt with and disposed of by a trial Court. See **SOULUS MRF1 LTD VS. AJU (2018) LPELR 46772 (CA)** also **MAT HOLDINGS LTD VS. LIMITED BANK FOR AFRICA PLC (2003) 2 NWLR (Pt. 803) at 90**.

In view of the above therefore, the Court must not fail to take note of the fact that the Defendant has admitted to the fact of the case of the Claimant in its Notice of intention to defend the action which makes it undoubtedly a proper case in which this Court ought to enter Judgment for the Claimant without the need for any trial.

I accordingly, I hereby enter Judgment for the Claimant in the sum of **₦20,050,000.00** (Twenty Million, Fifty Thousand Naira) only being the refund of payments made to the Defendant by the Claimant in pursuant to the agreement entered into by the Claimant and the Defendant for the sale of a four-bedroom semi-detached duplex with Boy's quarters in the Defendant's estate situated at Kaniz Homes Estate, Karsana North District Cadastral Zone **D05**, Abuja.

This sum shall attract post judgment interest at the rate of **10%** per annum with effect from today until the entire sum is liquidated.

I assess the costs of this suit at **₦200,000** (Two Hundred Thousand Naira) in favour of the Claimant against the Defendant.

SIGNED:
HON. JUDGE
08/05/2025.

Appearance:

U. Albert Uko, Esq, with S. E. Adino, Esq, for the Claimant

F. B. Ayodele, Esq, for the Defendant