IN THE HIGH COURT OF JUSTICE

OF EDO STATE OF NIGERIA

IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP, HON.JUSTICE P.A. AKHIHIERO

ON MONDAY

THE 15TH DAY OF DECEMBER, 2025.

BETWEEN: ***SUIT NO. B/67/2023***

WINNIE IGBINOBA ----------CLAIMANT

AND

MR. EDOBOR OSHIO ----------DEFENDANT

JUDGMENT

The Claimant instituted this suit against the Defendant vide a Writ of Summons and Statement of Claim filed on the 27th of January 2023. However, the extant Statement of Claim is the Claimant's Amended Statement of Claim filed on the 16th of February 2024 wherein she claimed against the Defendant as follows:

1) ***A Declaration that the Defendant refund the sum of N2,000,000.00 (Two Million Naira) that the Claimant gave to the defendant to purchase the piece/parcel of land, situated at No. 4, Mike Edo-Ogie Street, Off Ogunmwenyi Street, Off Ugbor Road, Benin City measuring 50feet by 100feet because of the spacious nature of the land;***
2) ***A Declaration, that the Defendant refund to the Claimant, the sum of N25,000,000.00 (Twenty-Five Million Naira) that the Claimant gave the Defendant to purchase the property measuring 100feet by 64feet situated at***

No. 4, Mike Edo-Ogie Street, Off Ogunwenyi Street, Off Ugbor Road, Benin City, because of the spacious nature of the land; and

3) ***A Declaration that the Defendant pays 10% interest accrued from the purchase of the piece/parcel of land, in entirety to the Claimant.***

The Writ of Summons, Statement of Claim and other accompanying processes were served on the Defendant by substituted means, but he did not put up any appearance to this suit, nor was he represented by any counsel despite several hearing notices that were served on him. In essence, the suit was undefended.

At the hearing, the Claimant testified that sometime in August 2020, the Defendant approached her and informed her that he was desirous of selling a duplex comprising of three rooms upstairs and one room downstairs and an apartment comprising of a two-bedroom flat upstairs and a two-bedroom flat downstairs. He was also offering an apartment comprising of a room and parlour self-contain upstairs, and a room and parlour self-contain downstairs respectively, on the land measuring 100feet by 64 feet all situate at No. 4, Mike Edo-Ogie Street, Off Ogunmwenyi, Off Ugbor Road, Benin City.

The Claimant alleged that after much deliberations on the price, the Defendant and herself agreed on the sum of Twenty-Five Million Naira (N25,000,000.00) only, which she allegedly paid to the Defendant, in the presence of some witness namely: Mr. Kelvin Okhidemeh of No. 14, Ebenezer Street, G.R.A., Benin City and Mr. Peter Tagbejami of No. 198, New Ogorode Road, Sapele Road, Delta State and Mr. John Omoruyi.

The Claimant alleged that a Deed of Assignment between the Defendant and herself was prepared to give effect to the agreement and both parties signed with their witnesses. The Claimant tendered a photocopy of the Deed of Assignment and same was admitted as Exhibit "A" at the hearing.

The Claimant alleged that the land is spacious and she showed interest in purchasing the piece/parcel of land, measuring 100ft by 50ft, including the buildings (The Duplex and Flats) and that the Defendant demanded for the sum of Five Million Naira (N5,000,000.000). She said that she paid the sum of Two Million Naira (N2,000,000.00) to the Defendant as part payment for the land and agreed to pay the balance sum later. Photocopies of the receipts evidencing payment of the

N2,000,000.00 (Two Million Naira) to the Defendant were tendered and admitted as Exhibits "B1" and "B2".

The Claimant said that she was astonished when she discovered that the piece/parcel of land measuring 50feet by 100feet was sold by the Defendant to a third party without refunding her deposit of (Two Million Naira) N2,000,000.00.

The Claimant alleged that because she was not in the country, she forwarded all the transactions and conversations between her and the Defendant to one Mr. John Omoruyi's Wiko Y16 Camera Phone from her Whasapp No: 09019320526 to Mr. John Omoruyi's Whatsapp No: 08034525504 to store and process them accordingly.

The printout of the conversation was tendered and admitted as "C1" while the certificate of compliance was admitted as Exhibit "C".

Upon the conclusion of the evidence in chief of the Claimant, the suit was adjourned for cross examination while fresh hearing notice was served the Defendant. However, the Defendant failed to appear in court to cross-examine the Claimant, so the Court foreclosed the Defendant from cross-examining the Claimant.

Thereafter, the Claimant called one more witness and closed her case. The suit was then adjourned for defence or final address. On the next adjourned date, the Claimant's counsel adopted her written address as her final argument.

In her final written address, the learned counsel for the Claimant, ***Mrs. C.E. Zekeri*** formulated a sole issue for determination as follows:

"Whether the Claimant proved her case on the preponderance of evidence as required by law."

Arguing the sole issue for determination, the Learned counsel submitted that the Claimant has fully discharged the evidential burden of proof and preponderance of evidence or balance of probabilities to entitle her to the reliefs sought.

The learned counsel rehashed the evidence adduced by the Claimant in support of her claims and submitted that where the evidence is uncontroverted and uncontested as in the instant suit, what is required of the Claimant is minimal proof and this the Claimant has done in this suit. She relied on the case of ***NEW BREED ORGANIZATION LTD***

V EROMOSELE (2006) VOL140 LRCN PAGE 2064 at 2067R2.

Finally, she urged the Court to grant all the reliefs sought by the Claimant in this suit.

I have carefully considered all the processes filed in this suit, together with the evidence led in the course of the hearing and the address of the learned Counsel for the Claimant.

As I have already observed, the Defendant did not put up any defence to this suit. Thus, the evidence of the Claimant remains unchallenged.

The position of the law is that evidence that is neither challenged nor debunked remains good and credible evidence which should be relied upon by the trial court, which has a duty to ascribe probative value to it. See the following decisions on the point: ***Monkom vs. Odili (2010) 2 NWLR (Pt.1179) 419 at 442; and Kopek Construction Ltd. vs. Ekisola (2010) 3 NWLR (Pt.1182) 618 at 663.***

Furthermore, where the Claimant has adduced admissible evidence which is satisfactory in the context of the case, and none is available from the Defendant, the burden on the Claimant is lighter as the case will be decided upon a minimum of proof. See*: **Adeleke vs. Iyanda (2001) 13 NWLR (Pt.729) 1at 23-24*.**

However, notwithstanding the fact that the suit is undefended, the Court would only be bound by the unchallenged and uncontroverted evidence of the Claimant if it is cogent and credible. See***: Arewa Textiles Plc. vs. Finetex Ltd. (2003) 7 NWLR (Pt.819) 322 at 341***.

Even where the evidence is unchallenged, the trial court still has a duty to evaluate it and be satisfied that it is credible and sufficient to sustain the claim. See: ***Gonzee (Nig.) Ltd. vs. Nigerian Educational Research and Development Council (2005) 13 NWLR (Pt.943) 634 at 650***.

Applying the foregoing principles, I will evaluate the evidence adduced by the Claimant to ascertain whether they are credible and sufficient to sustain the Claim.

I am of the view that the sole Issue for Determination in this suit is: ***whether the Claimant is entitled to the reliefs claimed in this suit.***

From the evidence adduced by the Claimant and her witnesses, this suit was instituted against the Defendant for the various sums of money which the Claimant paid to the Defendant when she tried to purchase some of the Defendant's property.

In the case of ***First Bank of Nigeria Plc v Alexander N. Ozokwere (2013) LPELR-21897(SC), Kekere Ekun JSC*** exposited as follows: ***"A claim of this nature for "money had and received" is in the nature of an equitable remedy to discourage unjust enrichment. It is to prevent a defendant from holding on to money which has come into his possession, which it is against conscience that he should keep."***

Furthermore in the case of ***Olam (Nigeria) Limited v Intercontinental Bank Limited (2009) LPELR-8275(CA) Nwodo JCA (of blessed memory)***, describing this kind of Claim, held: ***"An action for money had and received is a common law action and has always been used in circumstances whenever conversion lies and money has been received on behalf of the Plaintiff by the Defendant. The claim is to compel the Defendant to restore such money to its true owner..., the Defendant is obliged by the ties of natural justice and equity to refund the money.***" See the old English case of ***BROOKS WHARF & BULL WHARF LTD. V. GOODMAN BROTHERS. 1937 1 K.B, 534.***

In the Nigerian case of ***OZIMS V. ANORUO [1991] 3 NWLR (Pt. 181) 571***, ***Oguntade, JCA***; (as he then was) dwelling on the legal basis of money had and received said thus: - ***"An action for money had and received, simpliciter, is based on what is generally described as quasi-contract. It is an equitable remedy for which the action lies for the recovery of money had and received under circumstances where any notion of an actual contract is excluded. It lies for money paid by mistake; or upon a failure of consideration, or for money got by imposition, express or implied; or extortion, or oppression; or an undue advantage taken of a person's situation, contrary to the laws made for the protection of persons under those circumstances.***

When an action is based on money had and received, the relationship of the parties is not looked upon as contractual giving rise to an obligation to repay. It is imposed by the Court under circumstances which it considers just and reasonable having regard to the relationship of the parties on equitable grounds. In other words, it is a debt or obligation to repay constituted by the act of the law, apart from any consent or intention

of the parties or privity of contract. See ***Brooks Wharf & Bull Wharf Ltd. v. Goodman Brothers (1937) 1 K.B. 534.*** These principles were examined and applied by the Federal Supreme Court in the case of ***Michael Foluwase Oduwobi & Ors v. Barclays Bank D.C.O. (1962) 1 S.C.N.L.R. 226 (1962) 1 All NLR 141 at 144-145.***

In the instant case, the Claimant adduced unchallenged evidence to show that the Defendant collected the sum of N2,000,000.00 (Two Million Naira) from the Claimant, for the purchase of a parcel of land, situated at No. 4, Mike Edo-Ogie Street, Off Ogunmwenyi Street, Off Ugbor Road, Benin City measuring 50feet by 100feet; and the sum of N25,000,000.00 (Twenty-Five Million Naira) for the purchase of the duplex.

The Claimant also led evidence to show that after making the aforesaid payments, she discovered that the parcel of land was sold by the Defendant to a third party without refunding her deposit of (Two Million Naira) N2,000,000.00. The Defendant did not deny all these allegations.

From the foregoing, it is apparent that the Defendant collected money from the Claimant for a consideration which has failed. Clearly, this is a case of unjust enrichment by the Defendant, and the Claimant is entitled to a refund of the money which the Defendant received from her.

On the whole, the sole issue for determination is resolved in favour of the Claimant.

The claims succeed and judgment is entered in favour of the Claimant as follows:

1) ***A Declaration that the Defendant refund the sum of N2,000,000.00 (Two Million Naira) that the Claimant gave to the Defendant to purchase the piece/parcel of land, situated at No. 4, Mike Edo-Ogie Street, Off Ogunmwenyi Street, Off Ugbor Road, Benin City measuring 50feet by 100feet because of the spacious nature of the land;***
2) ***A Declaration, that the Defendant refund to the Claimant, the sum of N25,000,000.00 (Twenty-Five Million Naira) that the Claimant gave the Defendant to purchase the property measuring 100feet by 64feet situated at No. 4, Mike Edo-Ogie Street, Off Ogunwenyi Street, Off Ugbor Road, Benin City, because of the spacious nature of the land; and***
3) ***A Declaration that the Defendant pays 10% interest accrued from the purchase of the piece/parcel of land, in entirety to the Claimant.***

The Defendant shall pay the sum of N200,000.00 (Two Hundred Thousand Naira) as costs to the Claimant.

P.A. AKHIHIERO
JUDGE
15/12/2025

<u>COUNSEL:</u>

Mrs. C.E. Zekeri----------Claimant.

Unrepresented---------- Defendant.