

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT 28 GUDU - ABUJA
ON TUESDAY THE 2ND DAY OF FEBRUARY, 2021.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO-ADEBIYI
SUIT NO. FCT/HC/CV/2640/2020

BETWEEN:

ROYAL EXCHANGE PLC-----CLAIMANT

AND

U.L.O CONSULTANTS LIMITED-----DEFENDANT

RULING

The Claimant by a Writ of Summons under the Undefended List claimed against the Defendant is as follows:

a. The sum of ~~₦~~16,500,000.00 (Sixteen Million Five Hundred thousand naira only) being the full amount of the last Rent and Service Charge paid by the Claimant to the defendant for the period of 1st May 2014 — 30th April 2015 which the Defendant undertook to refund.

IN THE ALTERNATIVE TO “a”

b. The sum of ~~₦~~7,745,832.00 (Seven Million, seven hundred and forty-five thousand, eight hundred and thirty-two naira only) being the unused portion of Rent and Service Charge for the period of 12th November 2014 30th April 2015; which the Claimant did not enjoy due to a forced and illegal ejection from the Premises.

IN ADDITION TO "a" or "b"

c. The sum of ~~₦~~6,886,159.43 (Six million, eight hundred and eighty six thousand, one hundred and fifty nine naira, forty three kobo) being the sum the Claimant expended on renovations and improvements to the

leased premises which it was forced to abandon following the forced and illegal eviction in November of 2014.

- d. The sum of ~~N~~2,300,000.00 being the cost of this suit.
- e. Interest on sum claimed in "a" or "b" at the rate of 21% per annum from 12th November 2014 till date of judgment and thereafter at the rate 10% till final liquidation of the judgment debt.

Along with the writ filed is an affidavit of 5 paragraphs deposed to by one Haruna Monday, a litigation Secretary in the Law firm of the Claimant's Counsel and a written address. From the facts deposed in the affidavit, the facts which gave rise to the institution of this suit are that the Claimant had been the Defendant's tenant since 2010. That the Claimant had to the knowledge of the Defendant, carried out renovation which improved the leased area and the total cost of the renovation was ~~N~~6,886,159.43 (Six Million Eight hundred and Eighty Six thousand, One hundred and fifty nine Naira, forty three kobo). That sometime around November 2014, the Claimant was forcefully evicted from the property by persons who claimed to be from from the High Court of Justice of the Federal Capital Territory as a result of a lawsuit between persons connected with the defendant and a 3rd Party over the entire property. That this fact was never disclosed to the Claimant prior to the tenancy. That as a result of the invasion and the forceful eviction, the Claimant was forced to abandon all of the costly improvements undertaken by it. That the Defendant recognised the enormity of the loss and damage suffered by the Claimant, expressed its regret and also undertook to refund in full, the last rent and service charge paid by the Claimant. That the Defendant has no defence to the Claimant's claim either for the larger claim which it admitted and undertook to pay or the

smaller claim which is the unused rent and service charge. In support, Claimant attached the following documents;

1. A copy of the lease agreement executed by both parties as Exhibit HM1;
2. Defendant's letter dated 14th January 2015 as Exhibit HM2;
3. Defendant's acknowledgment letter of payment of Claimant's last rent as Exhibit HM3;
4. Copy of Bill of Quantities detailing renovation of works undertaken as Exhibit HM4;
5. Copy of claimant's Management's approval for the renovation as Exhibit HM5;
6. Copy of UBA Cheque and Covering letter for the first tranche of payment for the renovation as Exhibit HM6;
7. Copy of First Bank Cheque and covering letter for the 2nd tranche of payment for the renovation as Exhibit HM7
8. Copy of Management approval for the transfer of the last tranche of payment for the renovation as Exhibit HM8.
9. Copy of Demand Letter by the Claimant to the Defendant as Exhibit HM9.

The Defendant has now filed a notice of intention to defend with an affidavit deposed to by one Chinedu Davis the Personal Assistant to the Chairman/Chief Executive Officer of the Defendant at the material time. From the facts deposed therein it's the Defendant's case that the Claimant was its tenant from the period of 2010 to 2015 and that the Claimant utilized and exhausted its existing tenancy with the Defendant. That the renovation work done by the Claimant in the Defendant's property was to the sole benefit and use of the Claimant all of which the Claimant utilized

and enjoyed during the existence of its tenancy. That at no material time did the Defendant have any pending lawsuit neither was the Defendant connected with any person having a pending lawsuit over the Defendant's property which led to the eviction of tenants in the premises. That the Defendant never had knowledge and was never a party to the suit that led to the eviction of both the Defendant and its tenants. That the said suit was between one Bil Construction Nig. Ltd and Gazi Construction Co. Ltd suit no. FCT/HC/CV/219/96. That as a result of the forceful eviction of the Defendant and its tenants, the Defendant promptly took all necessary steps to challenge the wrongful eviction at the High Court before the same judge who signed the warrant of possession and same was successful. That the Learned Judge, Hon. Justice S.E. Aladetoyinbo who was surprised that the Defendant and its tenants who were never parties to the suit were wrongfully thrown out, ordered the immediate return of the Defendants and its tenants back to the building. That the wrongful eviction was carried out on the 12th of November 2014 and by the 1st of December 2014, the Defendant got an order of court returning all its tenants including the Defendant back to the building. That the Defendant promptly wrote to all its tenants, apologizing and asking the tenants to return to the building. That the Claimant opted to return and remain in the building having agreed with the Defendant that the wrongful eviction was due to no fault of the Defendant and that things were back to normal. That the Claimant's tenancy for the period was due 30th April, 2015 and that since the Claimant had decided to remain in the building, the property managers requested for payment of the Claimant's facility fee, to enable them meet up with their obligations as to purchase of diesel, payment of security as well as other levies. That it was as a result of this request the

Claimant through its solicitors wrote an offensive and vindictive letter to the Defendant requesting for a refund that never existed. That the Claimant after the wrongful eviction remained in the Defendant's property as its tenant, and constantly maintained the office as well as received all its correspondence and attend to its clients and customers there till April 2016 when the Claimant wrote to the Defendant. That the Claimant is in arrears of rent and owes the Defendant the sum of N16,500,000.00 being rent for the period of 1st May, 2015 — 30th April 2016 and N726,329.17 being outstanding service charge for the period of 1st May, 2014 to 30th April, 2015. That the Claimant does not have any outstanding rent to recover rather is in arrears of rent which the Defendant shall counter claim to recover. That the Claimant was never wrongfully evicted for 5 clear months as the Claimant returned to the property in December, 2014. That the Claimant upon being in arrears of rent for one year, absconded from the building without notifying the Defendant. That there is need for further investigation by way of calling witnesses and it will be in the overall interest of justice for this suit to be transferred to the general cause list. In support, Defendant attached two documents as follows;

1. A copy of warrant of possession attached and marked Exhibit A.
2. A copy of the Ruling challenging the eviction, attached and Marked as Exhibit B.

I have examined the claim of the Defendant as well as the affidavit and the written address filed as argument in support of the Undefended list claim. I have also examined the Defendant's notice of intention to defend as well as the affidavit attached. The issue to be determined in this case is;

Whether the notice of intention to defend has disclosed a defence on merit vis a vis the claim of the Claimant.

It is trite that in an action brought under the Undefended List Procedure, the Court is required to consider only the evidence contained in the Affidavit filed by the Defendant in support of the Notice of Intention to Defend the Suit. Once the Court comes to the conclusion that the Affidavit does not disclose a defence on the merit on a triable issue, the Court is to proceed with the hearing of the Suit as an Undefended Suit and enter Judgment.

The pertinent question at this juncture would be whether the notice of intention to defend and the affidavit attached by the Defendant established a defence on the merit. In determining whether a defendant has a good defence to the action brought against him or he has disclosed such facts as may be deemed sufficient to defend the action, this Court will look at the facts deposed to in the affidavit attached to the notice of intention to defend and see if the facts stated therein can afford a defence to the action. In this instant case, it is the case of the Defendant from the affidavit that the Claimant's wrongful eviction was challenged, and a Court order was gotten reinstating the Defendant and its tenants (Claimant) back to the property. That he wrote to the Claimant urging him to return to the said property which the Claimant obliged and return to the property in December 2014. That the Claimant had been in the property since December 2014 till sometime in 2016 when they absconded from the property and in doing so, are in arrears of rent as oppose to the claim of the claimant that they are entitled to a refund. On the other hand, it is the claim of the claimant that the Defendant upon the forceful eviction, wrote to the Claimant giving Claimant the option of either

coming back to the property or getting a full refund of the last rent paid, which claimant took the option of refund, hence this claim.

I have considered the defence set out by the Defendant the law is trite that the defendant's affidavit must condescend upon particulars and should as far as possible, deal specifically with the plaintiff's claim and affidavit and state clearly and concisely what the defence is and what facts and documents are relied on to support it. The fact that the Claimant was evicted is not in contention in this case as what is in issue is whether or not the Claimant actually returned to the property subsequent upon the Defendant's Exhibit B, that is, the Court Order for the Defendant and its tenants' to return to the said property. There seem to be a material contradiction in the affidavit of the Defendant with the facts and exhibits attached to the Claimant's claim. Although the general rule is that conflicting affidavit evidence must be resolved by oral evidence, it is not necessary where documentary evidence is available to resolve the conflict. Paragraph 20 of the Defendants affidavit it states, ***"That the claimant was never evicted for 5 clear months as the Claimant returned back to the property in December 2014."*** However, the Claimant's Exhibit HM2, which is the letter from the Defendant informing the Claimant of the Court's decision reinstating Defendant and its tenant to the property and giving the option for return to the property or a full refund is dated 14th January, 2015 and the Claimant received said letter on the 16th of January. The inference to be drawn is that there is no way the Claimant would have returned to the property prior to the receipt of this letter. Secondly, from paragraph 20 of the Defendant's affidavit the Defendant stated ***"That the Claimant is in arrears of rent and owes the Defendant the sum of N16,500,000.00 being rent for the***

period of 1st May 2015-30th April 2016, N726,329.17 being outstanding service charge for the period of 1st May, 2014 to 30th April 2015". However, the Claimant's Exhibit HM3 is the Defendant's letter acknowledging payments of the rent and service charge paid for the period of 1st May 2014 to 30th April 2015. Hence, it is clear that the Claimant cannot be said to be in arrears of service charge for the said period as the Defendant had acknowledged the receipt of payment of the rent and service charge for the said term. With respect to the arrear of the rent allegedly owed by the Claimant for the period of 1st May 2015 to the 30th of April 2016, there is nothing before me to show or support the Claim of the Defendant that the Claimant actually returned to the property and stayed for the duration so stated by the Claimant. These material contradictions punch a hole in the Defendants affidavit attached to the notice of intention to defend. The allegations of the Defendant without particulars to back same does not ground a defence on the merit or raise a triable issue. The court in LEWIS V UBA PLC (2016) 6 NWLR (Pt. 1508) 329, 350 held that an affidavit supporting a notice of intention to defend must "condescend upon particulars". The submission of Defendant's Counsel that the Claimant's failure to request for a refund prior to 2016 cannot take the place of evidence also, the allegation that Claimant remained in the property and in fact is in arrears of rent and service charge is bereft of particulars.

In my humble view, a mere general statement that the Claimant returned to the property without more cannot absolve the Defendant. Such statements must be supported by particulars. There must be a real defence and not a make-belief or a concocted defence which the defendant has done and I hold that the notice of intention to defend has failed to

raise triable issues to warrant this Court to transfer the case to the general cause list.

Having held that the notice of intention to defend is bereft of a defence, the next issue to be determined is Whether the Claimant proved its claim to be entitled to the reliefs sought. The Claimant filed this suit under the undefended list claiming for refund of rent paid to the Defendant as a result of the forceful eviction of the Claimant in the Defendant's property. In proof of its case, the Defendant tendered the letter, written by the Defendant acknowledging the forceful eviction as well as the steps taken by the Defendant rectifying the said eviction. In the said Exhibit HM2, the Defendant stated that

“We wish therefore to be informed whether you are desirous of resuming your occupation of the premises and to further assure you that we have taken all necessary legal steps to forestall any future re-occurrence. In the event you desire to resume occupation, we shall discountenance the period between the eviction and your return in the computation of your tenancy period. However, if you are not desirous of resuming occupation of the premises, we are willing to refund in full the last rent paid by you.”

From the contents of the Exhibit HM2 particularly the excerpts, the Defendants is admitting that there was indeed a wrongful eviction and offered the Claimant to return to the property having rectified the issue or get a full refund. The Claimant in further proof that it is entitled to the

refund, tendered acknowledgement letter for the payment of rent for the term of May 2014 to June 2015 from the Defendant. Also, the Claimant tendered a Demand Letter for a refund on the rent paid as in Exhibit HM9 which content is proof that they chose the route of refund as opposed to returning to the property. Therefore, questions that beg to be answered at this point is whether the Claimant wrongfully evicted thereby constituting a breach of the tenancy between parties? Did the Defendant offer the Claimant to return or if Claimant chooses not to return to the property a refund of the last rent paid? Did the Claimant choose a refund? The answers to these questions are in the affirmative more so as the Defendant's affidavit has failed to disclose a defence on the merit, I therefore hold that the Claimant is entitled to a refund of the rent paid.

With respect to the Claim of the Claimant for the refund of the improvement done on the property. The Claimant in proof of this claim, stated that he carried out extensive renovations on the property to the knowledge of the Defendant and tendered a copy of Bill of Quantities detailing renovation of works undertaken as Exhibit HM4; copy of claimant's Management's approval for the renovation as Exhibit HM5; copy of UBA Cheque and Covering letter for the first tranche of payment for the renovation as Exhibit HM6; copy of First Bank Cheque and covering letter for the 2nd tranche of payment for the renovation as Exhibit HM7 and Copy of Management approval for the transfer of the last tranche of payment for the renovation as Exhibit HM8. From the provision of Section 14 of the Recovery of Premises Act Cap 544, Laws of the Federation 1999 applicable to FCT, it makes provisions for a tenant to get compensation on any improvement done on the tenanted property upon determination or quitting of his tenancy subject to the provisions of Section 15. The said

Section 15 of the Recovery of Premises Act Cap 544, Laws of the Federation 1999 provides that a tenant shall not be entitled to compensation in respect to any improvement, unless he has executed it the previous consent in writing of the landlord. In this case, there is nothing before me showing that the Consent of the Defendant was gotten in writing for the Claimant to carry out the improvements done. The Court in the case of REGISTERED TRUSTEES OF THE LIVING CHRIST MISSION & ORS v. ADUBA & ANOR (2016) LPELR-41591 (CA) held “*that disentitlement of a tenant to claim compensation for improvements he carried out on the premises without the written consent of the landlord is prescribed in S. 155 of the Landlord and Tenant Law which provides that a tenant shall not be entitled to compensation in respect of any improvement, unless he has executed it with the previous consent in writing of the Landlord*”. Therefore, in the absence of any written consent from the Defendant, the Claimant is not entitled to any refund on the improvement done on the property.

The Claimant is also asking the Court to award interest on the sum (refund) claimed at the rate of 21% per annum from 12th November 2014 till date of judgment and thereafter at the rate of 10% till final judgement. It has been the position of the Courts that a claim for interest is not a liquidated money demand claim and as such, a court cannot award it under the undefended list procedure. The Supreme Court in the case of AFRIBANK V. AKARA (2006) ALL FWLR (PT. 304) PG. 401 held that except where parties have agreed on payment of interest, it is not right to award interest predating the date of judgment. There must be express agreement that interest will be charged. A Court determining a claim under the undefended list procedure cannot expand its jurisdiction by assessing interest claimed in the suit since the procedure is available for

speedy judgment on a liquidated money demand only or for a debt where the defendant has no defence. This is the position of the Court in the case of GOMBE V. P. W. OIL (NIG) LTD (1995) 6 NWLR (Pt. 402) and EKERETE V. UBA PLC (2005) 9 NWLR (Pt. 930) 401 at 414. In NIPOST VS. IRBORK NIG. LTD. (2006) 8 NWLR (PT.982)P 323, the Court of Appeal held that a claim for pre-judgment interest is for the recovery of an unliquidated money demand and is therefore outside the provision of the Undefended List Procedure. Also, The Court in NECHIL AGENCIES LTD & ANOR VS. VICTOR AGENCIES LTD (2011) LPELR-4588 (CA) Per Awotoye J. C. A in P.13 paras A-D held,

“The item of pre-judgment interest ought not to have been entertained at all under the undefended list because pre-judgment interest has to be proved before the court. Facts justifying its claim must also be clearly stated, and such facts must show how the plaintiff acquired the right to claim the pre-judgment interest.”

This Court will therefore adopt the above reasoning and hold that the claim for pre-judgment interest fails. However, the rules of this Court make provision for the award of post judgment interest, as such, this Court will grant the relief of post judgment interest of 10% in favour of the Claimant.

The claimant is also claiming for cost of this suit against the Defendant. Order 10 of the FCT High Court Civil Procedure Rules 2018 makes provision for Claimant in an undefended list to claim for cost and the law is trite that cost is at the discretion of the Court and cost follows event. Therefore, this Court will award cost in the sum of ₦ 500,000.00 against the Defendant.

Consequently, it is hereby ordered as follows:

1. That the Claimant is entitled to the sum of ~~₦~~16,500,000.00 (Sixteen Million Five Hundred thousand naira only) being the full amount of the last Rent and Service Charge paid by the Claimant to the defendant for the period of 1st May 2014 to 30th April 2015 which the Defendant undertook to refund.
2. That interest on the above sum calculated at 10% (ten percent) per annum, be paid to the Claimant from the date of judgment until the judgment sum is liquidated.
3. Cost in the sum of ~~₦~~500,000.00 (five hundred thousand Naira) only is awarded in favour of the Claimant against the Defendant.

Parties:Parties absent.

Appearances:Haruna Wada, Esq., for the Claimant. Defendant not represented.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI

JUDGE

02/02/2021