

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON THE 6TH DAY OF December, 2019
BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
COURT 26.

SUIT NO.: FCT/HC/CV/397/18

BETWEEN:

ROYAL FOUNTAIN PROPERTIES LTD-----CLAIMANT

AND

DR.DONALD ENEH-----DEFENDANT

RULING

In this case the Plaintiff, Royal Fountain Property Limited Claims the following against the Defendant Dr. Donald Eneh.

The reliefs are as follows:

- (1) A Declaration that the Tenancy of the Defendant had expired on the 14th day of December,2017 and was duly determined.
- (2) An Order mandating the Defendant to pay to the Plaintiff the arrears of Rent in the sum of N7,777,777.77K being the total amount payable to Claimant for the arrears of 11 months at the rate of N666,666.66K per month.

- (3) An Order directing the Defendant to pay mense profit on the property from the date of hold over till Judgment is delivered and vacant possession delivered to Claimant.
- (4) An Order mandating the Defendant to deliver vacant possession of the said 4 Bedroom Duplex and 2 Rooms Boys quarters and all appurtenances situate at No.15 Freetown Street Wuse II Abuja, forthwith.
- (5) An Order of Court restraining the Defendant from relocating or moving to a destination that will be unknown to the Claimant thereby frustrating the Claimant from enforcing the above Claim.

According to the Claimant they are the Managers of 4 Bedroom Duplex and 2 Rooms Boys quarters and all its appurtenances situate at No. 15 Freetown Street Wuse II Abuja- called hereafter the Res.

That the Defendant is the tenant in the Res. That the Defendant is a yearly tenant and rent is usually due and payable on or before 14th December each year.

That the Defendant entered into a Contractual Tenancy Agreement with the Claimant for a Year from the 15th day of December, 2015 to the 14th day of December, 2016, through the said Tenancy Agreement dated the 15th day of December, 2015. The tenancy rate is N8,000,000.00 (Eight Million Naira) only. The tenancy ran from the 15th day of December, 2015 to the 14th day of December, 2016. The rent was renewed for the period of 15/12/2016 to 14/12/2017. But the Defendant has not paid. That the tenancy relationship between the Claimant and Defendant had expired since the 14th day of December, 2017. That the Claimant had written to the Defendant several letters

demanding for the payment of the said arrears of rent but all to no avail.

That Claimant have also served the Defendant FORM E – Notice to Tenant of Owners Intension to apply to recover possession. The Defendant acknowledged same and all other correspondences but refused to pay the said arrears of rent. Being a Law abiding and not resorting to self help of forcefully ejecting the tenant, the Claimant instituted this action claiming all the reliefs as spelt out earlier in this Ruling. The action is a debt liquidated money Demand which the Plaintiff believes the Defendant has no prima facie Defence.

He had followed the Writ with an application for Summary Judgment pursuant to Order 11 of the Rules of this Court because to their believe and conviction the Defendant has no prima facie Defence to the Claimants Suit. He had filed an Affidavit of 19 paragraphs which was deposed to by Bashiru Adamu a staff of the Claimant. They attached 5 documents marked as **EXHIBITS BSA 1 - BSA 5**. It is the believe of the Claimant that this Court is their last hope to recover the said rent and the suffering, miseries and untold hardship and inconveniences the Claimant had suffered by the Defendant's refusal to pay the said rent. Hence they applied for this Summary Judgment which they feel if granted will not in any way prejudice the Defendant or make him to suffer any injustice.

In the written address in support of the application for Summary Judgment the Claimant raised an issue for Determination which is:

“Whether by the Affidavit and Documentary evidence, the applicant has made out a case to entitled them to Summary Judgment under the Provisions of Order 11 Rule 2 of the FCT High Court Rules 2018”.

He answered the question in the affirmative stating that the Claimant has through the documents and Affidavit made out a case and is entitled to Summary Judgment. To the Claimant the Defendant has no Defence to the case of the Claimant. That Summary Judgment is the most appropriate and applicable thing to do. Since the Defendant has no good Defence to the case. He urged Court to enter Judgment Summarily in favor of the Claimant as provided for in:

Order 11 Rule 5 (2) FCT High Court Rules 2018.

He also submitted that in this case the applicant shows in the Affidavit that Defendant is in arrears of rent and had also held over the said Res. He referred to the case of

Obitunde Vs Onyesoh Comm. Bank (2014) 4 MJSC (PT 11)

That Summary Judgment will serve the best interest of Justice to show that the Court is the last hope of the people. That it will also save the time of parties and Court too and enable the Claimant to enjoy its investment. That by the Defendant holding over the Claimant is facing a lot of financial hardship due to the neglect and refusal of the Defendant to pay and deliver vacant possession of the premises. He referred to the case of

Wood grant Limited VS Skye Bank PLC (2011) All FWLR (PT 601) 1516 @ 1533 Para C-D

He urged the Court to enter Summary Judgment for the applicant as per its Claim and pursuant to the provision of **Order 11 Rule 1 FCT High Court Rules 2018**.

Upon receipt Originating processes and the Application for Summary Judgment, the Defendant filed a notice of intension to Defend. Supported with the facts contained in the 17 paragraphs of facts. He attached 3 documents to establish the said notice of intention to defend and that he has a prima facie defence to the Suit of the Claimant.

In the notice to defend the Defendant stated that as a yearly tenant he was paying a rent of N8,000,000.00 (Eight Million Naira) from 15/12/15 when he became a tenant to the landlord. That, as at then he was the Chief Executive Officer (CEO) of the Nigeria Police Health Maintenance Limited, the HMO- Health Maintenance Organization for the Police Force. That it was the Nigeria Police outfit that was responsible for the payment of the Rent, but that they have failed to pay up for some time and, that they have not paid him his entitlements since he was relieved of his job. That ever since he was in the property he had always paid his rent regularly and paid all the utility bills when due.

However he claimed that the instance claim of N7,777,777.77K for a period of 11 months is misleading. That the Originating process filed by the Plaintiff is defective as it offends the provisions of the Rules which provides for the application the Plaintiff is seeking. That as a tenant he had completed several renovations in the demised premises; He had equally paid tenement rates, undertaken repairs of the MANTRAC generator set, paid other bills which ordinarily should be

paid by the Plaintiff on the agreement to be reimburse. But the landlord never did that.

That after several demands and embarrassment from the Abuja Municipal Council for none payment of the tenement rates he paid all the outstanding owed to the (AMAC) Abuja Municipal Area Council. He attached a copy of the receipt evidencing payment of the tenement rate as well as copy of the process evidencing the action brought against the Claimant in the Magistrate Court.

That he is willing to adduce evidence of the facts as contained in this notice. That since the dispute in issue is on Tenancy, it will be proper for the Court to allow parties to defend themselves by adducing evidence in a hearing instead of grant Summary Judgment as the Plaintiff want the Court to do in this case. More so since the matter is not commercial contractual transaction.

That because he had not even been paid his entitlement that has caused untold hardship on him and he finds it difficult to renew the said rent. That on several occasions he had asked the Plaintiff for time to pay up the outstanding arrears. He had equally instructed his Solicitors to write a letter to Plaintiff seeking an amicable resolution of the matter. But that the Claimant never responded to that. He attached a copy of that letter dated 19/12/18. That he was equally sent a letter written to him by his former employer to the Claimant assuring him the (Defendant) of their readiness to pay his entitlement within a short period. He attached the said letter and other correspondences between his Solicitors and former Employer.

That he is willing to pay up the outstanding arrears of rent and peacefully vacate the premises with smearing the relationship between

him and the Claimant. That granting the Summary Judgment will deny him not to be in the interest of Justice of the case and fair hearing. That the interest of Justice will be met if he is allowed reasonable time to vacate the demised premises and fair hearing.

The Claimant did not challenge/respond on the notice to defend in writing. The Counsel for the Plaintiff informed the Court on record that the parties have met several times but have not finalized on the amicable settlement. That settlement has failed as the parties has been unable to fully agree on the Terms of Settlement. He urged the Court to enter the Summary Judgment in their favor.

In response to the Plaintiff Counsel reiterated that the Defendant is willing to resolve the dispute but needs time to do so and peacefully vacate the premises. He referred the Court to the letter from the Police which they attached.

COURT

Once there is a call for Summary Judgment, it is incumbent on such person to establish with facts why the Court should enter Judgment Summarily in the interest of that person.

Once a party is served with a Writ asking the Court to enter Judgment Summarily, that party can file a notice to defend if it has any. That he does by filing a notice supported by facts showing why the Summary Judgment should not be entered against it. That he has a defence on merit and that the Court should allow him chance to defend itself as he has a prima facie defence on merit.

Where Summary Judgment is sought the Court considers the contents of the pleadings the motion and any additional evidence presented by the parties to determine whether there is a genuine issue of material fact rather than one in Law. Summary Judgments allows speedy dispensation of the issues in dispute without a Trial.

Bona Textile Limited Vs. ATM PLC (2013) 2 NWLR (PT.1338) 35

A party can apply for Summary Judgment when the Claimant believes that there is no defence to his claim. It is very common in issue pertaining to debt or liquidated money demand such procedure enables the Plaintiff to obtain Judgment without any trial.

Oceanic Bank Int.PLC Vs. CSS Limited (2012) 9 NWLR (PT.1305) 397

UBA Vs. Jargaba (2007) 11 NWLR (PT.1045) 247

Thor Limited Vs. FCMB Limited (2005) 14 NWLR (PT.946) 696

Macaulay Vs. NAL.Merchant Bank Limited (1990) 4 NWLR (PT.744) 283

It is the responsibility of the Claimant to state in the Affidavit explicit grounds for belief which the Court can consider before granting the reliefs as sought.

Emuwa Vs. Consolidated Discount (2001) 2 NWLR (PT.697) 424

Oceanic Bank Vs. CSS LTD supra.

In this case the Defendant did not deny owing the rent but stated that the amount- N7,777,777.77 claimed as outstanding rent is not true. Again that he had caused out repairs on the demised premises and had also paid some tenement rates and other utility bill which are yet to be refunded by the Landlord/Claimant.

He had also informed the Court that the rent is supposed to be paid by his former employer who had written a letter to that effect. That he had served a copy of this letter and other correspondences to the Claimant. The Claimant did not deny those facts. Those facts remain unchallenged.

It is the Law that once a Defendant is able to show that it has a Defence no matter how small, which **“inflict”** a punch on the Claim of the Plaintiff, the Court will halt and consider that. Where, in the eye of the Court such fact is cogent the Court will not hesitate to transfer the case to the general cause list and allow parties to call evidence. Thereby giving them right to be heard.

The fact placed before this Court by the Defendant as listed above are weighty enough for this Court to allow the parties to go into hearing rather than granting Summary Judgment. By allowing parties to be heard, the Court will be in a better position to consider and fully determine the issues in dispute in this case. By so doing Justice will be perfectly done and seen to be manifestly done and done better. So the Court will NOT grant the Summary Judgment as sought because there is prima facie Defence on merit. Justice will be done best if parties are heard.

Moreover since the parties have been exploring settlement of the case particularly going by the content of the letter from the former employer of the Defendant, it is imperative to state that Justice will be better done if the matter goes into hearing by transferring it to the general cause list and allowing parties to file and exchange their pleadings while still exploring amicable ways to settle their dispute out of Court. They have a right to report the outcome of the amicable

settlement and where they succeed they can file the Terms and the Court will enter same as their Consent Judgment which they can enforce as any Judgment gotten after full hearing. If that happens the Court will end the proceeding and the matter will close. Otherwise the Court will conclude on the case after all parties have fully opened and closed its respective cases. Then Judgment will be delivered.

This is the Ruling of this Court delivered today the 6th day of December, 2019 by me.

JUSTICE K.N.OGBONNAYA

Hon. JUDGE