

**IN THE HIGH COURT OF JUSTICE OF THE  
FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI - ABUJA**

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR**

**COURT NO: 10**

**SUIT NO: FCT/HC/CV/1889/2014**

**BETWEEN:**

**KEEB & COMPANY REALTORS LIMITED**

(Suing As Lawful Attorney to WIRE MAKERS NIG LTD).....**CLAIMANT**

**VS**

**FAAMOUS CONSULTING LIMITED.....DEFENDANT**

**JUDGMENT**

By a Writ of Summons dated 4/3/2014 and filed same day, Claimant claims against the Defendant as follows;

- (1) Rent Arrears or alternatively damages for use and occupation in the sum of ₦1,105,000.00 (One Million, One Hundred and Five Thousand Naira) only per annum, for the period of 13<sup>th</sup> January, 2013 to 12<sup>th</sup> January 2014.

The Writ and other court processes were served on the Defendant on 21/3/2014, who responded by filing his Statement of Defence on 31/3/2014. And prays the court to dismiss the Suit of the Claimant.

Pleadings having been filed and exchanged, the case went into full blown trial. Claimant opened his case on 29/10/2014, Gosioha Clifford a Director in the firm of Keeb & Company Realtors Limited, Lawful Attorney to the Claimant, testified as sole witness for the Claimant. He adopted the deposition in his Witness Statement on Oath deposed to on 4/3/2014 as his testimony.

He told the court that, Keeb & Company Relators Ltd become Lawful Attorney to the Landlord of the premises, subject matter of the Suit, that the Defendant was a yearly tenant who occupied an office space of 85 Square metres of the premises belonging to the Landlord vide a Tenancy Agreement dated 8/1/2009 for a term of two (2) years certain commencing from 13<sup>th</sup> January, 2009 to 12<sup>th</sup> January, 2011 at an annual rent of ₦850,000.00 (Eight Hundred and Fifty Thousand Naira) only representing rent for the term.

He also told the court that, the rent for the premises was mutually increased to the sum of ₦1,105,000.00 (One Million, One Hundred and Five Thousand Naira) net of withholding tax and VAT vide letter issued by the Claimant on 21/5/2012 and acknowledged by the Defendant. The Defendant renewed the tenancy twice and the last renewed tenancy expired on 12/1/2013 but failed to renew her tenancy and remained in possession, continued the use and occupation of the property till 15/1/2014.

Claimant's sole witness further informed the court that, preparatory to recovery of the premises from the Defendant through due legal process,

Claimant through her Solicitor caused a Six months' Notice to Quit to be issued to the Defendant on 9/6/2013, despite receipt of the said Notice to Quit the Defendant refused to vacate and deliver up possession of the Claimant property and detained same till 15/1/2014, when she vacated without paying her outstanding arrears of rent for the period from 13<sup>th</sup> January, 2013 to 12<sup>th</sup> January, 2014. The Defendant also failed to pay electricity bill and carry out renovation of the property as stated in the Tenancy Agreement.

Under Cross-examination, the witness for the Claimant – PW1 told the court that, Wire Makers Nig Ltd owns the property, subject matter of the Suit, that there was no letter accepting Exhibit "E" and there is no letter rejecting it as well. And that the Defendant did not make payment since the Exhibit "E" was served on the Defendant. Admitted that the rent for the property was put at N850,000.00 (Eight Hundred and Fifty Thousand Naira per annum at the time the property was let to the Defendant.

During the testimony of the Claimant's sole witness the following documents were tendered and admitted in evidence.

- (1) Power of Attorney granted by Wire Makers Nig Ltd in favour of Keeb & Company Realtors Ltd admitted as Exhibit "A".
- (2) A letter titled "Letter of Authority as counsel in respect of all legal matters pertaining to the building comprising 3 storey office Block known as Copper House, No. 4 (Plot 1950 Algiers Street Wuse Zone 5, Abuja dated 8/1/2009, admitted as Exhibit "B".

- (3) A Tenancy Agreement between Wire Makers Nig Ltd and Faamous Consulting Ltd dated 8/1/2009 admitted as Exhibit "C".
- (4) A Letter Titled "Notice to Quit" dated 9/7/2013 issued to Faamous Consulting Ltd admitted as Exhibit "D".
- (5) A Letter Titled "Rental Review of Suite 204, Copper House, 4 Algiers Street Zone 5 Wuse Abuja dated 21/5/2012 admitted as Exhibit "E".
- (6) A letter Titled "Outstanding Rent/End of Tenancy Interior Redecoration dated 21/1/2014 admitted as Exhibit "F".

At the close of the evidence of the Claimant, the Defendant opened her case with one Johnson Akomolafe staff of the Defendant Companytestifying as DW1. He adopted the depositions in his Witness Statement on Oath made on 4/4/2014 as oral evidence in proof of the case of the Defendant.

DW1 informed the court that the decision of the Claimant to increase the rent of the rented premises was unilateral and not mutual. That Defendant rejected the said increase both orally and in writing, but Claimant refused to acknowledge receipt of her letter to the court that, Defendant vacated the premises on or about 12<sup>th</sup> January, 2014, about Six months after Defendant was served with Notice to Quit, upon vacating the premises Defendant attempted to serve Claimant a letter informing her that Defendant have moved but Claimant's Solicitor refused to acknowledge the

letter on the ground that the letter failed to state the arrangement made by the Defendants to pay the outstanding rent, but Defendant witness dropped a copy of the letter in the office of the Claimant's Solicitor.

DW1 further informed the court that Defendant left the premises with the knowledge of the Claimant and paid the electricity bill she consumed before leaving and also carried out repairs of the premises leaving it in a more tenable condition than she met it. That the Claimant deliberately wrote letter dated 21<sup>st</sup> January, 2014 for the purpose of this case, Defendant has since replied the letter, however Claimant refused to acknowledged same.

Finally told the court that the Claimant's Suit is not proper, same was brought malafide only to oppress and annoy the Defendant.

Under Cross-examination, DW1 told the court that he knows that the Defendant was in arrears of rent at the time she moved from the premises, he is aware of Tenancy Agreement between the parties which was made when Defendant moved into the property. There was no joint inspection of the property before Defendant moved and Exhibit "E" was received and acknowledged but the Defendant rejected the increment on rent.

There was no re-examination of DW1.

The Defendant's 2<sup>nd</sup> witness Adewale Maku, the Managing Director of the Defendant adopted the depositions in his Witness Statement on Oath filed on 4/4/14 as oral evidence in support of their case. In his testimony, DW2 restated the testimony of DW1 and wants court to dismiss the Suit.

Under cross-examination, DW 2 told the court that the Defendant occupied the property for five years vide a Written Agreement with the Landlord which contained a rent review clause. Stated that they did not issue to the landlord the three (3) months' Notice of Intention to renew rent and there was no joint inspection of the property before Defendant vacated the premises.

DW2 further inform court under cross-examination that Defendant was in arrears of rent, they received and acknowledged Exhibit "E" on 22/5/2012. The Defendant's last rent expired on 11/1/2012, but remained in possession of the premises for over a year due to the contention which arose as a result of increment in rent.

There was no re-examination of DW2.

In the course of defending the Suit, the Defendant tendered the following document through DW1 during his Examination-in-Chief.

- (1) A copy of a letter dated 12/1/14 Titled RE: NOTICE TO QUIT dated 12/1/2014 Manager Unicorn Real Estate Ltd admitted as Exhibits "N".
- (2) Copy of letter dated 27/1/2014 Titled "OUTSTANDING RENT/END OF TENANCY INTERIOR RE-DECORATION" written by the Defendant admitted as Exhibit "I".

With the testimony of DW2, Defendant closed her case, and the case proceeded to Address. The parties filed and exchanged Written Addresses. The Defendant's Final Written Address dated 15/5/2019 and filed same day

Defendant also filed a Reply on points of law to Claimant's Final Written Address deemed properly filed on 3/7/2020. The Defendant in her Written Address formulated 2 (Two) issues for determination namely;

- (a) Whether the Plaintiff's Suit is properly constituted for the court to assume jurisdiction.
- (b) Whether the Plaintiff is entitled to the reliefs sought from this court.

The Claimant's final Written Address is dated 1/7/2019, but filed on 2/7/2019 in their said Written Address; Claimant's counsel formulated a sole issue for determination, namely;

- (1) Whether from the uncontroverted oral and documentary evidence presented by the Plaintiff before this court, this Plaintiff is not entitled to the reliefs claimed against the Defendant?

Addressing the court on 24/11/2020, Adegbite Isaac Adeniyi Esq for the Defendant adopted the submission in the Defendant's Written Address. He urge the court to dismiss the claims and award cost against the Claimant. In the same vein A.O Erim Esq of Claimant's counsel adopted the submission in Claimant's Final Written Address. He urge court to grant the reliefs of the Claimant.

I have given an insightful consideration to the pleadings as well as the testimonial and documentary evidence and the written submission of

Learned Counsel for the parties and I find that the issue which calls for determination are;

- (1) Whether the Claimant has the requisite locus to commence this action if in the affirmative;
- (2) Whether the Claimant has placed before this court sufficient grounds to warrant the grant of the relief sought.

On issue one above; Defendant challenges the jurisdiction of court to entertain this Suit. The question of jurisdiction is so fundamental in nature and once raised, the court has a duty to determine it first before it can proceed to adjudication. It is the power or legal authority which a court has to decide matters being litigated before it. If a court is bereft of jurisdiction to hear and determine a matter before it any step taken in the matter is null and void. See the case of Oduko Vs Government of Ebonyi State (2009) 9 NWLR (PT.1147) 439 @ 442. See also Shelim Vs Gobang (2009) 12 NWLR (PT.1156) 435 @ 441.

In the instant case, the ground upon which the Defendant challenge the jurisdiction of the court is that the Claimant lack the requisite locus standi to commence this action as items 10 and 13 of Exhibit "A" Power of Attorney which specifically states the powers granted to the Claimant did not expressly confer powers to the Claimant to bring this action as those portions of the Exhibit "A" does not relate to the Claimant's Suit or defending a Suit in respect of the property, furthermore that the suit was filed in the name of a busy body with whom the Defendant has no privity of contract. Relies on the cases of Julius Berger (Nig) Plc Vs T.R.C.B. Ltd



(2019) 5 NWLR (PT.1665) 219 @ 256 Para A; Vulcan Gases Ltd Vs G.F. Ind. AG (2001) 9 NWLR (PT.719) 610 @ 640 Para F, Ajuwon Vs Adeoti (1990) 2 NWLR (PT. 132) 271 @ 294 Paras A – C Ezeigwe Vs Awudu (2008) 11 NWLR (PT. 1097) 158 @ 176 Paras A – C. Ladejobi Vs Oguntayo (2004) 18 NWLR (PT.904) 149 @ 173 Paras C – E, Plateau State Vs A.G. Fed. (2006) 3 NWLR (PT.967) 346 @ 423 Paras B – C and the case of CCB Ltd Vs Mbakwe (2002) 2 WRN 177 @ 188 – 189 lines 35 – 5. On the other hand, Claimant contends that the issue of locus standi was not pleaded by the Defendant and urge court to discountenance it as it dwells on unfounded technicalities. Refer court to Njoku & Ors Vs Eme & Ors (1973) 5 SC 293 and the principles of law of Agency as an exception to the doctrine of privity of contract as stated in the cases of Makwe Vs Nwukor (2001) 14 NWLR (PT.733) 372 Ratio 2, Borishade Vs NBN Ltd (2007) 1 NWLR (PT. 1015) 217 @ 249; Nneji Vs Chukwu (1988) 3 NWLR (PT.81) 184, Idogierhis Vs Oare II (2005) 17 NWLR (PT. 34); Inakoju Vs Adeleke (2007) 4 NWLR; Ladejobi Vs Oguntayo (2004) 18 NWLR (PT.904) 159 @ 77 and Adesokan Vs Adegorolu (1997) 3 NWLR (PT.493) 261 contends also that Defendant had neverdisputed that the Claimant was not lawful Attorney to Wire Makers Ltd, her principal as Defendant had always paid rent to her.

Locus Standi has been defined in a Plethora of cases. In Nkporinwi Vs Ejire (2011) ALL FWLR (PT.557) 716 @ 717 the court defined it as the legal capacity to initiate and properly invoke the judicial power and authority of a court of law in a case or over a dispute. The sole determinant of whether or not a Claimant has locus standi is the Statement of Claim filed

by the Claimant. See *Nkporiniwi Vs Ejire* (Supra). Thus in the consideration of this issue the court must take a look at its records and this the court is empowered to do. See *Agbareh Vs Mimra* (2008) ALL FWLR (PT.409) 559.

I have taken a considered look at the Statement of Claim filed by the Claimant and I find that paragraphs 2 and 3 of it contains a narrative of how the Claimant came about the authority to commence this action, vide a Power of Attorney donated to her on 1/3/2005 and now admitted as Exhibit "A". A reading of the 2<sup>nd</sup> paragraph of Exhibit "A" reveals that the Donor of the power; Wire Makers Nigeria Ltd appoints the Donee, Keeb & Company Realtors limited to be my Lawful Attorney in my name and on my behalf "to do all or any of the following things" and herein lies the crux of Defendant's claim that the Claimant lacks locus standi to sue in his name, in doing so Defendant failed to take into cognizance the other leg of the power donated to the Donee, as it clearly gives the Claimant the authority to act on behalf of the Donor. The entire words in my opinion must be construed together to arrive at the extent of powers being given to the Donor. This position was affirmed in the case of *Okogie Vs Epoyun* (2011) ALL FWLR (PT.565) 378 @ 393 Paras A – B where the court stated;

"Instruments must be construed as a whole in order to ascertain the true meaning of its several clauses and words of each clause must be so interpreted so as to bring them into harmony with the other Provisions of the instrument".

The instrument delegating power to the Donee clearly appoint her as a lawful Attorney to carry on the list of things listed from 1 to 14 in the name of the Donor and on behalf of the Donor. By bringing this action as lawful Attorney of the Donor Wire Makers Nig Ltd, the Claimant has acted within the clear mandate given her vide Exhibit "A" as it clearly recognizes action done on behalf of the Donor, Exhibit "A" therefore clothes the authority and competence on the Claimant to commence this action. Accordingly this issue is resolved in favour of the Defendant. I so hold.

On the second issue; whether the Claimant is entitled to the relief sought, Claimant seek arrears of rent or alternatively damages for the use and occupation of the premises in the sum of ₦1,105,000.00 (One Million One Hundred and Five Thousand Naira) only per annum from 13<sup>th</sup> January to 12<sup>th</sup> January 2014 and cost of action Claimant seeks these reliefs because, the Defendant failed to renew her tenancy after her tenancy expired on 12<sup>th</sup> January, 2013 but remained in possession till 15<sup>th</sup> January 2014 the mutually agreed rent for the property upon a letter of increase dated 21/5/2014 and received in evidence s Exhibit "D" was ₦1,105,000.00 (One Million One Hundred and Five Thousand Naira) on the other hand, Defendant contends that the Claimant unilaterally increased the rent therefore she was not bound to accept the said unilateral increase in rent and in deed rejected it as well, which laid the foundation for the feud between the parties. However admits that she was in arrears of rent which in my opinion is the purport of this action. It is trite law that facts admitted require no further proof. See the case of Adusei Vs Adebayo (2012) ALL FWLR (PT, 627) 664. Thus the court will view this fact of

admission of thing in arrears of rent as an admission to the claims of the Claimant.

The question which follows is what will be the amount due and payable to the Claimant in view of the fact that the Defendant disputes the fact that there was no mutual Agreement to the increase in rent as contained in Exhibit "E", which sum is now claimed as arrears of rent by the Claimant? It is trite law that once there has been an Agreement between the Landlord and the tenant as to a fixed rate as rent, the Landlord cannot unilaterally increase that rate as doing that would amount to a breach of contract. See *Yahaya Vs Chukwura* (2002) 3 NWLR (PT. 753) 20. See also *Cobra Ltd & Ors Vs Omole Estate & Investment Ltd* (2000) LPELR – 6809 CA. I have taken a considered look at Exhibit "E" which Claimant claims contains the mutually agreed increase in rent and I find that the said Exhibit merely informs the Defendant of increase in rent from ₦850,000.00 (Eight Hundred and Fifty Thousand Naira) per annum to ₦1,105,000.00 (One Million, One Hundred and Five thousand Naira) per annum, now claimed by the Claimant as arrears of rent, this in the court's view cannot stand as mutually agreed increment and thus binding on the Defendant as contract at best, it is an offer as described by the authorities above, which the Defendant is not bound to accept. Therefore the period the Defendant held over the increase in the rent was not binding on her. I so hold. And since the Claimant claims for arrears of rent the rent payable to her is the rent paid by the Defendant before the period Defendant held over. I am of this view because the law is that where parties to a tenancy Agreement fail to agree on specific amount of rent to be paid, the court has the power to

order the rent payable is the fair market rate. To determine what is fair market or reasonable rent, there must be evidence adduced before the court. See *Away Motors Co Ltd Vs Adewunmi* (1993) 5 NWLR (PT. 292) 236 CA. The evidence adduced in this court on the rent paid by the Defendant as agreed by both parties is the sum of ₦850,000.00, which is stated in Exhibit "C" and this sum in the opinion of the court is due and payable to the Claimant as arrears of rent. This is more so as the Claimant failed to lead any other evidence apart from Exhibit "E" how she came about the sum now claimed against the Defendant.

From all of these Claimant's claim for arrears of rent succeed and Judgment is entered in favour of the Claimant as follows.

- (1) The Defendant is hereby ordered to pay to the Claimant the sum of ₦850,000.00 (Eight Hundred and Fifty Thousand Naira) as arrears of rent for the period of 13<sup>th</sup> January, 2013 to 12<sup>th</sup> January 2014 which sum is the rent as agreed by the parties.
- (2) Cost follows event, event as occurred therefore Defendant is hereby ordered to pay to the Claimant cost put at ₦100,000.00 (One Hundred Thousand Naira)

**HON. JUSTICE O.C. AGBAZA**

Judge

17/2/2021

APPEARANCE

A. O. ERIM ESQ FOR THE CLAIMANT

ADEGBITE ISAAC ADENIYI FOR THE DEFENDANT

