IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION
HOLDEN AT JABI FCT ABUJA

SUIT NO: FCT/HC/CV/1803/2020

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

BETWEEN:

MRS. VICTORIA OTIGBA…… CLAIMANT

AND

1. **ALL PROGRESSIVE CONGRESS (APC)**
2. **THE NATIONAL CHAIRMAN ALL PROGRESSIVE CONGRESS (APC)**
3. **THE NATIONAL SECRETARY ALL PROGRESSIVE CONGRESS (APC)** } **DEFENDANTS**

The court resumes sitting with the same membership.

Ado Ma'aji Esq appearing with Aliyu Anas Esq and U.U. Chamo Esq for the claimant.

E.E. Mmeni Esq appeared for the defendants.

JUDGMENT

The claimant filed this writ of summons dated the 11th day of June, 2020 and claims as follows:

A. A declaration that the tenancy agreement between the plaintiff and the defendants has been terminated with effect from 31st day of October 2019 a week after the final demand notice was served on the defendants.
B. A declaration that the defendants are responsible for holding over of the plaintiff's property after the termination of the tenancy agreement.
C. An order of this Honourable Court directing the defendants to forthwith quit and hand over vacant possession of the plaintiff's property known as No. 6 (Now No. 16), Bissau Street, Wuse Zone 6, Abuja, with all appurtenances in good and tenantable condition to the plaintiff.
D. A declaration that the plaintiff is entitle to the sum of ₦8,800,000.00 (Eight Million, Eight Hundred Thousand Naira) only as outstanding balance of rent for 2015/2016 tenancy year.
E. A declaration that the plaintiff is entitle to the sum of ₦46,000,000.00 (Forty Six Million Naira) only as Arrears of rent from 7th July, 2016 to 6th November, 2019.

F. An order of this Honourable Court directing the defendants to pay to the plaintiff the sum of N54,000,000.00 (Fifty Four Million Naira) only as outstanding balance of rent and arrears of rent as contained in relief D, and

G. An order of this Honourable Court directing the defendant to pay to the plaintiff as mense profit daily at the rate of N37,808.22 (Thirty Seven Thousand Eight Hundred and Eight Naira, Twenty Two Kobo) only from 7th October, 2019 until vacant possession is given.

H. An order of this Honourable Court directing the defendants to pay to the plaintiff 17% interest rate of the judgment sum until final liquidation.

I. An order of this Honourable Court directing the defendants to pay the sum of ₦10,000,000.00 (Ten Million Naira) only as cost of this action.

The writ was filed along with statement of claim, and witness statement on oath of one Victoria Otigba, who is the claimant in this suit, and these are in addition to the following documents attached as follows:

a. Tenancy Agreement between the plaintiff and the 1st defendant;
b. Plaintiff's Letter of demand dated the 24th day of October 2019; and
c. Duplicate copies of Notice of Owner's intention to Recover possession served on the defendants on the 13th day of March, 2020 together with the certificate of service.

The defendants filed a joint statement of defence dated the 6th day of October, 2020 and witness statement on oath of one Ayodele Shedrach, who is the legal officer in the Legal Department of the 1st defendant.

In trying to discharge the burden place upon her, the claimant testified as a witness, and this is in line with sections 131-133 of the Evidence Act 2011. See the case of **Azike V. Nigerian Bottling Company Plc (2019) All FWLR (pt 989) p. 1223,** and this is after she has adopted her witness statement on oath. The subpoenaed witness also tendered some documents.

The defence witness also adopted his witness statement on oath.

It is in the adopted witness statement on oath of the PW1 that she and the 1st defendant (represented by the 2nd and 3rd defendants) executed a Tenancy Agreement of one year commencing from the 7th day of July, 2014 and terminating on the 6th day of July, 2015 over the said property No. 6 (Now No. 16) Bissau Street, Wuse Zone 6, Abuja. That the total annual rent for the property as agreed by both parties is ₦13,800,000.00 (Thirteen Million, Eight Hundred Thousand Naira) only per annum and this remains throughout the subsistence of the tenancy agreement. That the defendant paid the agreed sum of ₦13,800,000.00 (Thirteen Million, Eight Hundred Thousand Naira) only at the commencement of the tenancy relationship for one year commencing from the 7th July, 2014 and expired on the 6th day of July, 2015. That when the one year rent expired, the 2nd and 3rd defendants informed the PW1 that they were willing to renew the tenancy but they needed some time to pay the rent, and in which she conceded to the defendants' request and granted them grace period, and after the expiration, the defendants paid the sum of N5,000,000.00 (Five Million Naira) as part payment for 2015/2016 tenancy year, leaving the outstanding balance of ₦8,800,000.00 (Eight Million, Eight Hundred Thousand Naira) only, and since then the defendants refused to pay up the balance of N8,800,000.00 to complete the outstanding rent of 2015/2016 tenancy year despite repeated demands and that the defendants are still in occupation and refused to pay the rent for about 4 (four) years from the 2016/2017 to 2019/2020.

It is stated that the PW1 caused a letter of final demand to be written to demand for the outstanding rent, and the defendants never replied after being served through the office of the 2nd defendant on the 25th day of October, 2019. That the solicitor to the claimant/PW1 caused a notice of owner's intention to recover possession to be served on the defendants and same was effected on the 13th March, 2020, and despite the service of the notice, the defendants refused to vacate the plaintiff's property and refused to pay the outstanding balance and arrears of rent.

In the course of examination in chief the PW1 tendered two documents, that is to say, the Tenancy Agreement and Final Demand Notice which are all marked by this court as EXH. 'A1' and 'A2' respectively.

During cross examination the PW1 told the court that it was she and the chairman and the secretary of the 1st defendant that executed the Tenancy Agreement, even though, she could not remember who signed as a witness to the agreement. When asked as to who acknowledged the receipt of the Final Demand Notice, and the PW1 answered that she was not there when the notice was served upon the defendants. The PW1 also told the court that she did not eject any tenant from the property and that she is not in possession of same.

The PW2, being a subpoenaed witness, who is a court bailiff attached to the Magistrate Court, Wuse Zone 6, Abuja, told the court that on the 13th day of March, 2020 his Registrar gave him two notices of owner's intention to serve in two places, that is to say, the 1st defendant at No.16, Bissau Street, Wuse Zone 6, and that he effected the said service by pasting same on the door of the address of the 1st defendant, while the other notice was served at the 1st defendant's headquarters at No. 40, Blantyre street, Off Ademola Adetokunbo, Wuse II, Abuja and he pasted the notice on the door, and after which he came back to the office to depose to a certificate of service. The PW2 tendered the duplicate copies of the notice, and as there was no objection on the part of the counsel to the defendants, the duplicate copies were admitted in evidence and were marked together as EXH. 'A3'.

The PW2 told the court during cross examination that when he went to serve the notices, he saw some people at the premises, however, he saw the door to the property locked, and was told by three people that the occupants were not around, and in the headquarters of the 1st defendant, he was told by the security that the 1st defendant's officials have gone for a meeting.

There was no re-examination by the claimant's counsel.

The defendants called one witness and he adopted his witness statement on oath as his evidence in this suit.

The defendant in their joint statement of defence admitted that the claimant is the landlord of the 1st defendant in respect of the property known as No. 6, (now No. 16), Bissau Street, Wuse Zone 6, Abuja, and that the 2nd and 3rd defendants are neither natural persons nor an artificial persons capable of entering into a contractual agreement, and therefore cannot be sued and sue in this case.

The defendants also admitted in their joint statement of defence that the tenancy commenced on the 7th day, 2014 and terminated on the 6th June, 2015 however denied the assertion that it was agreed by the parties that the defendants shall relinquish possession of the said property at the expiration of the one year provided the defendants does not intend to renew the tenancy.

The defendants also admitted paragraphs 7, 8, 9, 10 and 11 of the statement of claim, and also admitted paragraphs 12, 13 and 14 of the statement of claim, and that the claimant is already in possession of the property having forcibly taken over the said property since the 11th of November, 2018 from the 1st defendant. That the defendants also denied paragraphs 15, 16, 17 and 18 of the statement of claim to the extent that the purported letter from the counsel to the claimant was never served on the defendants as the acknowledgment copy did not emanate from the office of the National Chairman of the 1st defendant.

The defendants further denied paragraphs 19, 20, 21 and 22 of the statement of claim to the extent that the claimant did not serve the notice of owner's intention to recover the said premises, and therefore dispute the jurisdiction of this court to hear this suit.

In the course of the cross examination, the DW1 was asked whether all correspondence giving to the office of the chairman of the 1st defendant go through him, and he answered in the negative, and that there are letters that go to the office of the chairman without going through the DW1.

It is also in the evidence of the DW1 during cross-examination that the EXH. 'A2' contained the stamp indicating the receipt by the National Chairman and is signed. The DW1 also told the court that they did not hand over the property to the claimant, but that they were locked out of the place because of the money being owed.

The DW1 further told the court during cross-examination that he put a call to the solicitor of the claimant inviting him for a meeting to reconcile.

The DW1 also told the court that of course there is an outstanding rent. When asked whether the defendants have complied with paragraph 8(i) of the Tenancy Agreement, the DW1 told the court the claimant frustrated the compliance by forcibly locking out the building.

When asked as to whether the decision of the 1st defendant to write to the DSS complaining of locking out the premises would warrant non payment of the rent by the 1st defendant, the DW1 told the court that he did not know.

The defence counsel did not re-examine the DW1.

The counsel to the defendants in his final written address formulated lone issue for determination, to wit:

> **Whether the claimant has proved her case to enable her entitle to the grant of any of the reliefs sought?**

The counsel submitted that the defendants objected to the admissibility of the tenancy agreement between the claimant and the 1st defendant, and he cited the case of **Oguma Association Companies (Nig.) Ltd V. Int'l Bank for West Africa Ltd (1988) LPELR – 2318 SC** to the effect that it is trite law that there are certain types of evidence such as hearsay and unstamped and unregistered documents which are inadmissible per se and which cannot form the basis for a decision and an objection to them may be taken at any stage of a trial or on appeal, and to him, even though the admissibility of the tenancy agreement was objected to, however, the court admitted same, and marked it as EXH. 'A1', and therefore, requested the court to revisit the question of admissibility of the document to take contrary position in its judgment, and he cited the case of **Ebenighe V. Achi (2011) 2 NWLR (pt 1230) 65 at 79 paras. D-E.**

The counsel submitted that an unstamped document cannot be admitted in evidence, and he cited section 22(4) of the Stamp Duties Act Cap. 58 LFN 2004, and therefore, urged the court to reject the Tenancy Agreement.

The counsel to the defendants submitted further that the Tenancy Agreement was signed by an unknown persons under the guise of the chairman and the secretary of the 1st defendant, while the 2nd and the 3rd defendants are neither natural persons nor artificial persons, and therefore, can neither sue or be sued; and to him, even the PW1 admitted that she does not know the names of those that signed on behalf of the 1st defendant, and he cited the cases of **Fawehinmi V. Nig. Bar Association (No. 2) (1989) 2 NWLR (pt 105) 558 at 595, and Gold mark (Nig.) Ltd V. Ibafon Co. Ltd (2012) 10 NWLR (pt 1308) 346 paras. G-H** to the effect that a contract entered into by a non-juristic person is null and void.

The counsel submitted that it is not the law that a landlord has unbridled right to invade the premises in the lawful occupation of a tenant, and by doing that he committed an infraction of the right of the tenant and renders himself liable for trespass, and he cited the cases of **Paul Tyoarine Tsegba & Anor. V. Registered Trustees of Mission House & 8 Ors (2018) LPELR – 44242 (CA) and Okafor V. A.G. of Anambra State (1992) 2 NWLR (pt 224) 391.**

The counsel submitted that it was clear that there was no evidence showing that the 1st defendant was still in possession except for the generating set of the 1st defendant, which was locked away by the claimant, and he referred to the case of **Etukudo & Anor. V. Udoakagba (2012) LPELR-7471(CA)** to the effect that the whole purpose of visit to locus in quo is for the court to see the subject matter or clarify minor contradictions and uncertainties that have arisen from the evidence of the parties, and finally urged the court to resolve the issue in favour of the defendants.

The counsel to the claimant, in his final written address, formulated three issues for determination, to wit:

1. Whether the claim that the 2nd and 3rd defendants are non juristic persons is sustainable and can exonerate the 1st defendant from liability?
2. Whether the Tenancy Agreement between the claimant and the 1st defendant has been duely determined?
3. Whether the claimant has proved her case on the preponderance of evidence adduced to be entitled for the grant of the reliefs sought?

On the issue No. 1 the counsel submitted that one of the contentions of the defendants is that the 2nd and 3rd defendants are non juristic persons and as such, cannot be sued, and further submitted that it is not the specific name under which a person is sued that determines whether or not the person is a juristic person, and that what determines whether or not a natural person exists who bears the name or a similar name or had in fact hitherto bore that name, and if the name is a creation of statute, it is the recognition of that artificial person under the extent law that is relevant, and further submitted that the hearing and determination of the case with the names of the 2nd and 3rd defendants will not in any way cause a miscarriage of justice in the circumstances of this case, and he cited the cases of **Ajadi V. Ajibola (2004) 16 NWLR (pt 898) p. 91,** and **Beyoda V. Govt. of Nigeria (2007) All FWLR (pt 394) p. 273.**

The counsel further submitted that it is despicable for the defendants after benefiting from an agreement to turn around and claim that the agreement is null and void, and he cited section 169 of the Evidence Act 2011. He further submitted that it is settled that a party cannot take a refuge from his contractual obligations as the pretext of his own illegality at the time of the transaction, and he relied on the case of **Kwagbala V. Bon Nig. Ltd (2004) 5 SCNJ,** and therefore urge the court to hold that the argument of the counsel to the defendants is a mirage and untenable.

On the issue No. 2, the counsel submitted that parties are always bound by their agreement freely entered into by them, and he cited the case of **Haidal V. S.A.I. Plc (2015) All FWLR (pt 790) p. 1344 at 1355.** He further submitted that a cursory look at paragraph 3 at page 4 of EXH. 'A1', it provides the circumstances that the relationship may be terminated and allows the landlord to re-enter the property and take possession of same.

The counsel also submitted that it is the contention of the defendants that the notice of demand was not served on the defendants, however, the court in its ruling dated 15th October, 2020 ruled that EXH. 'A2' was received by the 2nd defendant, and the contention of the counsel to the defendant that the defendants were never in receipt of the notice in speculative nor backed up by any credible evidence, and this goes to no issue, and he cited the

case of **Ayemwenre V. Evbuomwan (2019) LPELR – 47213 (CA)** where the Court of Appeal relying on the case of **Adike V. Obiareri (2002) FWLR (pt 131) 1907** held that it is trite to state that where a document is admitted in evidence with respect to and proof of an issue and such document having been admitted as genuine, correct and existing, oral evidence cannot be given or ascribed preference over the content of the said document. He further relied on the case of **Efiok & Amp and Ors V. Ani & Amp and Ors (2013) LPELR 21400 (CA)** to the effect that oral evidence cannot alter or controvert the contents of a document rightly admitted in evidence, and he relied also on the case of **Fatunbi V. Olanloye (2004) 40 NRN 148,** and he urged the court to hold that the tenancy relationship between the 1st defendant and the claimant terminated as per the agreement of the parties.

The counsel submitted that when a tenant fails to pay his rent as at when due and fails to pay arrears the tenancy automatically is converted to a tenancy at will which requires only 7 days notice of owner's intention to recover possession, and he cited the cases of **Splinter (Nig.) Ltd V. Oasis Finance Ltd (2013) 18 NWLR (PT 1385) 188 AT 220** and **Ayinke Stores Ltd. V. Adebogun (2008) 10 NWLR (pt 1096) 612** to the effect that it is obvious that if at the time the landlord seeks to recover his premises, the tenancy had already expired, and it is reasonable to assume that there will be no need for a notice to quit, and all that the landlord would be required to serve on the tenant would be the statutory 7 days notice of intention to apply to court to recover possession, and also relied on the cases of **Bolas Nig. Ltd V. Wembod Estates Ltd (2016) LPELR – 40193 (CA),** and **Odutola V. Papersack Nig. Ltd (2006) 18 NWLR (pt 1012) 470 SC** to the effect that from the moment a year's rent became due and payable by the respondent but remained unpaid, the yearly tenancy if any, created by the conduct of the parties thereto came to an end by effluxion of time and the tenant became a tenant at will of the landlord by continuing in possession of the property. To him, it is therefore clear that even without serving the letter for demand, the tenancy between the claimant and the defendants had already determined by effluxion of time.

On the issue No. 3, the counsel to the claimant submitted that the claimant has discharged the onus of proving her case, because, to him, in an action for the recovery of premises, what are required to be proved by the claimant is compliance with the steps to be taken as expounded under the law and that proof is on the balance of probability, and they as follows:

1. Service of quit notice where the tenancy is not determined;
2. Service of 7 days notice of owner's intention to apply to court to recover possession; and
3. Commencement of action in court. He referred to the case of **Iheanacho V. Uzochukwu.** He submitted further that the tenancy relationship between the two parties has been determined in accordance with exhibit 'A1' as well as by effluxion of time, and therefore, what is required from the claimant is the service of 7 days notice of owner's intention to apply to the court to recover possession, and it is in evidence that on the 13th day of March, 2020 the defendants were served with notice of owner's intention to apply to court to recover possession on the instruction of the claimant.

The counsel further submitted that by virtue of section 28 of the Recovery of Premises Act (applicable to Federal Capital Territory, Abuja), service of notice may be effected by parties on the property, and that the PW2 has told this court that he pasted the notice on the property, being the subject matter of this suit when he could not found anybody to accept the service, and therefore, urged this court to hold that the claimant has proved her case.

The counsel to the claimant also submitted that since after the expiration of the defendants' rent on the 6th day of July, 2015, the only payment made by the defendants was the sum of N5,000,000.00 which was a part payment for the reserved rent for 2015/2016 tenancy year. To him, this testimony by the PW1 was never challenged, controverted or disputed by the defendants, but the position was supported by the testimonies of the DW1 as contained in the witness statement on oath of the DW1, and it requires no further proof, and he cited the provisions of section 123 of the Evidence Act.

The counsel submitted that it is the firm position of the claimant that the defendants are still in possession of the property, and this position was evident in view of the fact that there is no evidence before this court that the defendants are locked out or are no longer in occupation. He submitted that during the visit to the locus in quo there exist traces of the defendants' occupation of the property as there are some rooms that are still under lock and key, and that there are two Mikano generating sets duely installed on the property which belong to the defendants.

On the claim of mesne profit, the counsel argued that the claim is meritorious as mesne profit is defined by the Supreme Court in the case of **Odutola & Anor. V. Papersack (supra).**

The counsel also submitted that EXH. "A1" was executed on the 7th day of July, 2014, and the requirement of stamping tenancy agreement was introduced by FIRS under section 2 of the Stamp Duties Act on the 2nd day of July, 2020 pursuant to the amendment of section 2 of the Finance Act 2019, and that this suit was instituted on the 11th day of June, 2020 earlier than the law which the defendants sought to rely on, and to him, the law cannot be applied retrospectively. He went further to cite the case of **R G Okuwobi V. Jimoh Ishola (1973) All NLR 233** to the effect that an unstamped documents could be admitted in evidence, since the main purpose of stamp duties is to get revenue for the government, and this has been reiterated in some cases to include **Efokhana V. N.D.I.C. & Anor. (2013) LPELR – 20199 (CA)** and **Princewill Eyo Asuquo V. Mrs. Grace Godfrey Eyo & Anor (2016) LPELR – 41169 (CA)** where the court held that a document cannot be rejected on the ground that it was not stamped. He then urged the court to grant the reliefs sought by the claimant.

After the close of the case, the court visited the locus, and observed that two of the rooms in the property are still locked, and there are two Mikano generating sets, belonging to the defendants, that are there.

Now having summarised the claims and the defence of the two parties, and the argument of counsel in their final written addresses, the question that arose for determination is:

Whether the claimant is entitled to the reliefs sought?

Thus, it is the claim of the claimant in paragraph 3 of the statement of claim that the 2nd defendant is the National Chairman of the 1st defendant and who together with the 3rd defendant represent the 1st defendant in executing the tenancy agreement between the 1st defendant and the claimant. While the defendants deny such claim and state that the 2nd defendant is neither a natural person nor an artificial person capable of entering into contractual agreement with the claimant, and so the 2nd defendant is merely an official designation in the organization of the 1st defendant and can neither sue nor be sued by the claimant.

The claimant led evidence in proof of such assertion in paragraph 4 of her witness statement on oath, and further relied on the tenancy agreement which was exhibited, and later tendered before the court, and which in spite of the objection, the court went ahead and admitted same.

The defendants in their witness statement on oath in defence of the averment in the statement of claim reiterated that position as stated in their statement of defence that the 2nd and 3rd defendants are neither natural persons nor an artificial persons capable of entering into contractual agreement with the claimant, and they cannot sue or be sued.

During cross examination, the PW1 (who is the claimant in this suit) when asked by the counsel to the defendants that whether she could tell the names of the representatives of the 1st defendant, stated that it was long-ago as it was since 2014 and that the 1st defendant has changed its chairman. When asked whether she has entered into an agreement with persons unknown, and she answered that she entered into an agreement with the chairman and the secretary.

It is the duty of this court to examine the exhibit before it. See the case of **Chemiron Int'l Limited V. Egbujuonuwa (2007) All FWLR (pt 395) p. 444.** In the instant case, it is on the above principle that I have to examine EXH. 'A1' which is the Tenancy Agreement.

Thus I have gone through the Tenancy Agreement (EXH. "A1") and discovered that it was entered between the claimant and the 1st defendant but was duely signed by the claimant on the one part and the chairman and the secretary of the 1st defendant on the

other part. It can also be seen that no names of those who signed on behalf of the 1st defendant were written, in essence, the chairman and the secretary did not write their names. In the circumstances, the witness knew only the chairman and the secretary in their official names and not by their personal names as contained in the agreement. By not mentioning the names of those who signed on behalf of the 1st defendant could not be deem as a challenged to the credibility to the evidence of the PW1. In essence, the PW1 has not been contradicted or challenged during cross-examination by the defence counsel. See the case of **Aderiyi V. Dasilva (2019) All FWLR (pt 993) p. 369 at 415 paras. B-C** where the Court of Appeal Lagos Division held that an unchallenged evidence is good evidence on which the court should act to make findings of facts. See also the case of **Gana V. F.R.N. (2019) All FWLR (pt 1012) p. 730 at 749 paras. B – C** where the Supreme Court held that where evidence is given by a party, and it is not contradicted by the other party who has the opportunity to do so, and such evidence proffered is not inherently incredible and does not offend any rational conclusion or state of physical things, the court should accord credibility to such evidence. In the instant case, the evidence of the PW1, having not contradicted or challenged during cross-examination, this court has to ascribe probative value to it, and to accept it as credible.

Moreso, the defendants admitted in paragraph 5 of their statement of defence, and in paragraph 9 of their witness statement on oath that the 1st defendant is a tenant to the plaintiff in respect of the property situate at No. 6 (now No. 16) Bissau Street, Wuse Zone 6, Abuja comprising of six No. of three bedroom flats, the tenancy commencing from 7th July, 2014 and terminating on the 6th June, 2015, therefore, looking at the commencement date on the face of the Tenancy Agreement (EXH. "A1"), it can be seen that it was the 7th day of July, 2014 as rightly stated by the defendants in their statement of defence and their witness statement on oath, and the description of the property given by the defendants in their statement of defence and their witness statement on oath is the same as contained in EXH. "A1", that is to say, situate at No. 6, Bissau

Street, Wuse Zone 6, Abuja and is comprised of 6 Nos. 3 bedroom flats.

By the above, it could be inferred that the 1st defendant is a tenant to the claimant. If the court is to further draw on inference as to how the 1st defendant become the tenant of the claimant as stated by the defendants in their statement of defence and their witness statement on oath, such inference is to be drawn from the EXH. "A1" and not any other document, as the defendants did not exhibit any contrary tenancy agreement entered between the 1st defendant and the claimant thereby to contradict or controvert the evidence of the claimant. See the case of **Gana V. F.R.N. (supra).** In the instant case, and for the fact that the document, that is EXH. "A1" has not been contradicted or controverted by any document to the contrary, it will be accepted in proof of the claim, and to this, I therefore hold. See the case of **Udo V. State (2019) All FWLR (pt 978) p. 164 at 182 paras. G-H** where the Supreme Court held that documentary evidence makes oral evidence more credible, in that documentary evidence serves as a hanger from which to asses oral testimony.

In the instant case, for the fact that it was only that the chairman and the secretary signed in their official capacity, and not in their own names, they represent the 1st defendant, and to this, I therefore, so hold.

Going by the assertion of the defendants in their statements of defence and their witness statement on oath that the 2nd and 3rd defendants are not to be sued, I make bold to say that by section 80 of the Electoral Act 2010 the 1st defendant which was registered under the same Act is a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name. See the case of **Fayemi V. Oni (2009) All FWLR (pt 493) p. 1265 at 1279 paras. F-G.**

The inclusion of the 2nd and 3rd defendants as parties may be wrong, and assuming the defendants are contesting as to their being made as parties, while they only acted as representatives of the 1st defendant or rather agents of the 1st defendant, the appropriate thing to do is to strike out their names as parties to the suit, and for the claimant to claim only from the 1st defendant alone

as a disclosed principal. See the case of **Heritage Bank Ltd. V. Bentworth Finance Nig. Ltd (2019) All FWLR (pt 997) p. 10 at 33 paras. E-F** where the Supreme Court held that a disclosed principal may be sued on any contract made on its behalf by the agent acting within its scope or authority. In the instant case, the 2nd and 3rd defendants acted on behalf of the 1st defendant, and they should have applied for their names to be struck out as parties having the principal being disclosed. At best what this court should do is to strike out the names of the 2nd and 3rd defendants as parties to this suit having acted as agents of the 1st defendant. In the circumstances, the argument of the counsel to the defendants that the Tenancy Agreement EXH. "A1" was signed by an unknown person is discountenanced, and I hold that Tenancy Agreement EXH. "A1" exists between the claimant and the 1st defendant duely executed between the claimant and the chairman and the secretary of the 1st defendant on behalf of the 1st defendant.

There is no dispute as annual rent for the property in the sum of N13,800,000.00 (Thirteen Million, Eight Hundred Thousand Naira) only, this is because the defendants have admitted in paragraph 7 of their statement of defence that they admitted paragraph 7 of the statement of claim.

The defendants in paragraph 8 of their statement of defence also admitted to paragraphs 9, 10 and 11 of the statement of claim to the effect that the first tenancy would expire on the 6th of June, 2015, and that at the expiration of such period, the defendants informed the claimant of their willingness to renew the tenancy but needed some time to pay the rent, and that the defendants have paid the sum of N5,000,000.00 (Five Million Naira) remaining the balance of N8,800,000.00 (Eight Million, Eight Hundred Thousand) for the payment of the rent for the period of 2015/2016 tenancy year.

However, by paragraph 8 of the statement of defence, the defendants averred that the claimant locked out the defendants and forcibly took possession from the 1st defendant since 11th November, 2018 till date.

During cross-examination, the PW1 (who is the claimant) answered that she has never ejected anybody from the premises, and that she is not in possession of the property. Apart from this, the

defendants in their witness statement on oath only repeated in paragraphs 11 and 12 of what is contained in paragraphs 8 and 9 of the statement of defence. The defendants did not bring any of the occupants that was said to have been ejected by the claimant to testify before the court. That occupant would have been a vital witness; and failure to invite him to give evidence on this, will be fatal to the defendants' case. See the case of **Famoroti V. F.R.N (2016) All FWLR (pt 856) p. 372 at 396 paras. B-D** to the effect that a vital witness is one whose evidence may determine a case one way or the other and failure to call him is fatal to the party who assets.

The court visited the premises and duely observed that there are two rooms still locked, and the two generating sets are still in the premises.

In the circumstances, the PW1 was not challenged or contradicted during cross examination, and therefore, the evidence elicited during cross-examination is worthy of acceptance; and the evidence elicited from the PW1, in the course of cross-examination to the effect that the claimant did not eject any of the occupants and is not in possession of the property, is hereby accepted.

The claimant in paragraphs 16 and 17 of the statement of claim averred that the solicitors of the claimant wrote a letter to the defendants dated the 24th October, 2019 asking for immediate payment, and the defendants refused to pay the outstanding rent and refused to yield up possession of the property to the claimant. However, the defendants in their statement of defence averred that the letter dated the 24th day of October, 2019 from the claimant's counsel was never served on the 1st defendant, and the acknowledged copy did not emanate from the office of the National Chairman of the 1st defendant, and that the 1st defendant cannot be expected to respond to a letter that was not served on it.

The claimant in her witness statement on oath deposed to the fact that the letter was served, and it was tendered during examination in chief and which was admitted by this court as EXH. "A2".

In the course of cross-examination, the PW1 told the court that she was not there when the demand notice was served, and when asked by the counsel to the defendants that upon the expiration of

the final demand notice whether she became in possession of the property, and the PW1 answered that she was not in possession of the property.

By this, it could be inferred that the PW1 was not challenged during cross-examination, and therefore, her evidence is accepted accordingly; that the demand notice was duely served.

Looking at the Final Demand Notice for rent dated the 24th day of October, 2019, it can be seen that there is a stamp which was duely signed at the office of the National Chairman acknowledging the receipt of the letter. This has not been controverted by any evidence from the defendants' side. I therefore, so hold that the evidence of the PW1 and the content of the EXH. "A2" are worthy of acceptance, and they are hereby accepted accordingly.

The claimant in her statement of claim averred that preparatory to taking over possession of the property, a notice of owner's intention to recover possession was served upon the defendants on the 13th of March, 2020, while they denied being served.

The claimant in her witness statement on oath deposed to the fact that the notice was duely served on the 13th March, 2020, and this made her to subpoenaed the PW2 before the court.

The subpoenaed witness by name Bala Yusuf testified that he served the notice of owner's intention to recover possession of the said property by pasting on the properly being the subject matter of this suit, and at the National Secretariat of the 1st defendant, and he tendered the copy of the notice in evidence. The counsel to the defendants did not object to the admissibility of the notice, and the court proceeded and admitted same.

In the course of cross examination, the counsel to the defendant asked the PW2 whether it is safe to say that he (the bailiff) did not effect a proper service having seen people and did not serve them, and to which he answered that it was a proper service, and that he asked of the officials from the security, and to which the security told him that the officials were not around.

The PW2 was not challenged during cross-examination, and therefore the evidence is worthy of acceptance, and it is hereby accepted.

The defendants called one witness, that is the DW1, and after adopting his witness statement on oath, he was asked, during cross-examination, that what date was the agreement entered, and he answered on the 7th day of July, 2014. When asked as to whether as at that date, he was not an employee of the 1st defendant and he answered in the affirmative. He was further asked as to whether he was not there when the defendants entered the place, and he answered in the affirmative. When also asked as to where did he get the information he deposed in his witness statement on oath, and he answered that it was from the writ of summons that was filed with respect to this case.

The DW1 was also asked as to whether all correspondences giving to the chairman of the 1st defendant goes through him, and he answered in the negative, and that there are letters that go to the chairman without passing through him.

Also during cross-examination, the DW1 was asked whether he has seen a stamp on the EXH. "A2" acknowledging the receipt of same, and he answered in the affirmative, and further stated that when the letter was attached to the process and it was served upon them, he was to write his legal opinion, and that legal opinion was not for public consumption.

The DW1 also testified during cross-examination that they did not hand over the property but that they were locked out because of money being owed. The DW1, when asked whether he knew the people that lived in the property, and he answered in the negative. He also testified during cross-examination that they wrote a complaint to the DSS when the claimant locked them out, and when asked as to what action the DSS take, the DW1 said that he did not know.

Thus, going through the questions and answer session between the counsel to the claimant, and the DW1, it can be seen that the DW1 was seriously challenged and contradicted during cross-examination, and to my mind, his evidence is not worthy of acceptance.

In his final written address, the counsel to the defendants asked this court to revisit the issue of admissibility of the document, that is the Tenancy Agreement (EXH. "A1") and to give contrary position.

He buttressed this argument with the case of **Ebenighe V. Achi (supra)** and further quoted the provisions of section 22(4) of the Stamp Duties Act Cap. 58, LFN 2004. He also relied on the case of **Oguma Association Companies (Nig.) Ltd V. International Bank For West Africa Ltd (1988) LPELR-2318 SC** to the effect that it is a trite law that there are certain types of evidence such as hearsay and unstamped and unregistered documents which are inadmissible per se and which cannot form the basis for a decision and an objection to them may be taken at any stage of a trial or an appeal or even at the instance of the court.

Thus section 22(4) of the Stamp Duties Act provides:

> **"Except as aforesaid and subject to the provision of section 93(3) of the Act, an instrument executed in Nigeria, or relating wherever executed, to any property situate or to any matter or thing done or to be done in Nigeria shall not, except in criminal proceedings be given in evidence, or be available for any purpose whatever unless it is duly stamped in accordance with law in force in Nigeria as the time when it was first executed."**

By the above quoted provisions, it could be inferred that any instrument executed in relation to property shall not be given in evidence or be available for any purpose unless it is duly stamped in accordance with the law in force and as at the time when it was first executed. The word used that is of concern to this court is "instrument", that is to say whether such word covers the Tenancy Agreement as in the instant case. See **Garner, Bryn A., Black's Law Dictionary, Eighth Edition, P. 813** where instrument is defined as a written legal document that defines rights, duties, entitlements or liabilities, such as a contract. By the definition of the word instrument given above, and in the instant case, the Tenancy Agreement is the legal document the rights, duties, entitlements and liabilities of both the landlord and the tenant, and therefore the section 22(4) of the Stamp Duties Act is relevant in the circumstances.

More so, section 23(3) (c) provides for the table of instrument as described in the schedule and person liable to pay the penalty in

the event of default of payment of the stamp duty, and lease is one of these instruments.

It is the contention of the counsel to the claimant that the requirement of stamping a tenancy agreement was introduced by the Federal Inland Revenue Service under section 2 of the Stamp Duties Act on the 2nd day of July, 2020 pursuant to an amendment of section 2 of the Finance Act 2019 and therefore, to him, under our jurisprudence, the laws are not to be applied retroactively. He further submitted that an unstamped documents could be admitted in evidence since the main purpose of Stamp Duties is to get revenue to the government, and further submitted that a document cannot be rejected on the ground that it was not stamped.

While I agree with the submission of the counsel to the claimant that this court can admit the claimant even if it is not stamped, to my mind, however, a weight cannot be attached to it while writing judgment, simply because from the initial stage is inadmissible by virtue of section 22(4) of the Stamp Duties Act. The provision of section 22(4) of the Act has not been amended by the coming of section 2 of the Finance Act 2019. Therefore, putting the arguments of the two counsel side by side, I am inclined to agree with the argument of the counsel to the defendants in this regard, this is because the provisions of section 22(4) of the Stamp Duties Act Cap. 58 LFN 2004 are very clear and unambiguous to the effect that except in criminal matters, an unstamped instrument shall not be given in evidence for any purpose unless it is duly stamped at the time when it was first executed. In the instant case, this court admitted wrongly the Tenancy Agreement and marked it as EXH. "A1", and what is required of this court to do, in the circumstances, is to expunge the wrongly admitted document, that is the Tenancy Agreement EXH. "A1". See the case of **Abubakar V. Chuks (2008) All FWLR (pt 408) p. 214 at 233 paras. D-F** where the Supreme Court held that where evidence is by error or otherwise admitted, it is the duty of the trial court to expunge it in giving its judgment. The Tenancy Agreement otherwise known as EXH. "A1" is hereby expunged accordingly.

The counsel to the defendants in his written address contended that the 1st defendant is no longer in possession of the said premises,

as the claimant locked out the 1st defendant and forcefully took possession since the 11th November, 2018, and this was denied by the claimant in her reply to the statement of defence and evidence was laid, and during cross examination, the PW1 was not contradicted nor challenged and the court accepted the evidence of the PW1, that is to say, the claimant did not eject the 1st defendant and is not in possession of the premises.

In trying to resolve the issue formulated above, recourse has to be had to the admitted facts presented by the defendants in their joint statement of defence. The defendants admitted in paragraphs 1 and 5 of the joint statement of defence that the claimant is the landlord of the 1st defendant with respect to the property situate and known as No. 6 (now No. 16) Bissau Street, Wuse, Zone 6, Abuja, and that the tenancy commenced from the 7th July, 2014 and to terminate on the 6th June, 2015.

The defendants also admitted in paragraph 6 that the 1st defendant is a tenant of the claimant in respect of the property situate at No. 6, (now No. 16) Bissau Street, Wuse Zone 6, Abuja comprising of six No. of three bedroom flats. However, they denied the other averments as contained in paragraph 6 of the statement of defence.

It is pertinent to find out the other averments in paragraph 6 of the statement of claim. The difference between what was admitted in paragraph 6 of the statement of claim, and paragraph 6 of the joint statement of defence is that "it was agreed by the parties that the defendant shall relinquish possession of the said property at the expiration of the one year provided the defendant does not intend to renew the tenancy agreement". Clearly what is intended in this sentence is that the landlord has the right to renew the tenancy and nothing more. This is because it is in evidence in paragraph 8 of the witness statement on oath of the claimant that when the one year rent expired, the 2nd and 3rd defendants informed the claimant that they were willing to renew the tenancy, but they needed sometime to pay the rent. The evidence in paragraph 8 of the witness statement on oath of the claimant was not been contradicted, rather defendants, have in their joint statement of defence more particularly paragraph 8, admitted paragraph 9 of the statement of

claim, to the effect that the claimant at the expiration of the defendants' tenancy on the 6th of July, 2015 inquired to find out from the defendants if they were willing to renew the tenancy or not. Based upon the above consideration, I hold that what was denied in paragraph 6 of the statement of claim goes to no issue.

The defendants in paragraph 7 of their joint statement of defence admitted that the reserved rent on the property is in the sum of N13,800,000.00 which the defendant paid, and also admitted to paragraphs 8, 9, 10 and 11 of the statement of claim that the 1st defendant made part payment. Paragraph 11 is to the effect that the defendants paid the sum of N5,000,000.00 (Five Million Naira) as part payment for 2015/2016 tenancy year leaving the outstanding balance of N8,800,000.00 (Eight Million, Eight Hundred Thousand Naira) only.

The defendants admitted in paragraphs 12, 13 and 14 of the statement of claim, and by paragraph 13, it is to the effect that the defendants are still in occupation of the property and the last payment made was the sum of N5,000,000.00 (Five Million Naira) which is a part payment for the rent of 2015/2016, and also by paragraph 14, it is to the effect that from the last payment till the filing of this suit is the period of (4) four years, that is from 2016 to 2020 and the defendants never paid anything. What the defendants denied in those paragraphs is that the defendants are not in possession of the premises as they were forcibly locked out by the claimant. This issue has been dealt with previously in this judgment.

In a nutshell, the defendants admitted to paragraphs 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the statement of claim, and the provision of the law is that facts admitted need no further proof. See section 123 of the Evidence Act 2011 which provides:

> **"No fact need be proved in any civil proceedings which the parties to the proceedings or their agents agree to admit at the hearing or which before the hearing, they agree to admit by any writing under their hands or which by any rule or pleading in force at the time they**

are deemed to have admitted by their pleadings…"

To this, see also the case of **Tal V. Minister of Commerce and Industries (2019) All FWLR (pt. 1002) 910 at 952 para. E** where the Court of Appeal, Makurdi Division held that facts admitted need no further proof. In the instant case, the defendants are bound by their admission of liability, therefore, irrespective of the existence of the Tenancy Agreement or not, the defendants have admitted to some of the issues in dispute, and they must be bound by those admissions, and to this, I therefore so hold.

Throughout the statement of defence, with particular reference to what have been admitted by the defendants, it could be inferred that the tenancy would determined in 2016 after the renewal for the year 2015/2016 and after payment of N5,000,000.00 leaving the balance N8,800,000.00, and for the fact the defendants continues to occupy the property, the tenancy determined by the service of notice of demand and that was in 2019, and to this, I so hold. Again what the claimant did by serving a notice of her intention to recover possession of the premises is in order. See section 7 of the Recovery of Premises Act Cap. 544 (Abuja) LFN 2006 which provides:

"When and so even as the term or interest of the tenant of any premises, held by him at will or for any term either with or without being liable to the payment of any rent, ends or is duly determined by a written notice to quit as in form B, C or D whichever is applicable to the case, or is otherwise duly determined, and the tenant, or, if the tenant does not actually occupy the premises or only occupies a part thereof, a person by whom the premises or any part thereof is actually occupied, neglects or refuses to quit and deliver up possession of the premises or of such part thereof respectively, the landlord of the premises or his agent may cause the person so neglecting or refusing to quit and deliver up possession to be served in the manner hereinafter mentioned, with a

written notice, as in form E signed by the landlord or his agent, of the landlord's intention to proceed to recover possession on a date not less than seven days from the date of service of the notice."

By the above quoted provisions, it could be inferred that where tenancy is determined, as in this case, seven days notice of owner's intention to apply to the court to recover possession is required. See also the case of **Uhuangho V. Edegbe (2017) All FWLR (pt 907) p. 1795 at pp. 1806-1807 paras. G-A** where the Court of Appeal, Benin Division held that a landlord desiring to recover possession or premises let to his tenant shall firstly, unless the tenancy has already expired, determine the tenancy by service on the defendant of an appropriate notice to quit. On the determination of the tenancy, he shall serve the tenant with the statutory 7 days notice of his intention to apply to the court to recover possession of the premises. In the instant case, the seven days notice of owner's intention to apply to recover possession served on the defendants, through the PW2, and by pasting, was in order. See also section 28 of the Recovery of Premises Act Cap. 544 (Abuja) LFN 2006. The PW2 tendered the copy of the seven days notice of owner's intention to recover the premises which is marked as EXH. "A3", and this is without any objection and the court admitted same, certainly the document has to be given legal effect. See the case of **Longie V. F.B.N (2006) All FWLR (pt 313) p. 59 at 84 para. E** where the Court of Appeal, Lagos Division held that a document tendered by consent and admitted ought to be given full legal effect. I therefore, hold the firm view that the seven days notice of the claimant's intention to recover the premises was duely served on the defendants and was in order.

Thus, for the fact that the tenancy has been determined by the notice of demand, and coupled with the seven days of owner's intention to recover possession, and upon the above considerations, I have to come to the conclusion that the claimant has been able to prove her claim and is therefore entitled to some of the reliefs sought.

It is hereby declared that the tenancy between the claimant and the defendants has been determined with effect from 31st day

of October, 2019, a week after the final demand notice was served on the defendants.

It is declared that the 1st defendant is responsible for holding over of the claimant's property after the termination of the tenancy.

The 1st defendant is hereby ordered to vacate and hand over vacant possession of the claimant's property known as No. 6 (now No. 16) Bissau Street, Wuse Zone 6, Abuja with all the appurtenances in good and tenantable condition to the claimant.

It is declared that the claimant is entitled to the sum of N8,800,000.00 (Eight Million, Eight Hundred Thousand Naira) as outstanding balance of rent for year 2015/2016 tenancy year.

It is declared that the claimant is entitled to the sum of N46,000,000.00 as arrears of rent from the 11th July, 2016 to 6 November, 2019 covering the period the 1st defendant occupies before the determination of the tenancy by final demand notice.

An order is given that the 1st defendant should pay to the claimant, as mesne profit at daily rate of N37,808.22k, and this is by virtue of the reserved rent in the sum of N13,800,000.00 (Thirteen Million, Eight Hundred Thousand Naira), and that is from 7th October, 2019 till vacant possession is given.

By virtue of Order 39 Rule 4 of the Rules of this court, the 1st defendant is ordered to pay to the claimant 10% interest per annum until the judgment sum is liquidated.

No cost of action is awarded, as it has not been proved having specifically pleaded by the claimant.

The relief in paragraph F of the statement of claim is refused.

Having the principal being disclosed, the 2nd and 3rd defendants being agents of the 1st defendant are hereby removed as defendants in this suit.

Signed
Hon. Judge
31/3/2021