

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

BEFORE HON. JUSTICE J.E. OBANOR
ON WEDNESDAY THE 31ST DAY OF MARCH, 2021.

SUIT NO: FCT/HC/CV/3306/2020

BETWEEN:

OLUSEGUN SAMUEL

.....CLAIMANT

AND

- 1. AHAMEFULE GEORGEBEST**
- 2. REGISTERED TRUSTEES OF WISDOM
ESTATE RESIDENTS ASSOCIATION**

.....DEFENDANTS

JUDGMENT

By a Writ of Summons filed with a Statement of Claim, Pre-action Counseling Certificate, Witness Statements on Oath and documents to be relied upon in evidence, the Claimant commenced the instant action against the Defendant on 30th November, 2020. In the Statement of Claim he claims as follows against the Defendant:

1. A DECLARATION of this honourable Court that the Plaintiff(Sic-Claimant) was entitled to the quiet and peaceful enjoyment of the two bedroom apartment he rented from the 1st Defendant at flat B71, Wisdom Estate, Lugbe, Abuja without any form of inconvenience, discomfort, pain, loss of property or interruption whatsoever.
2. A DECLARATION of this honourable Court that the citing and construction of Flat B71 in area susceptible to devastating flood and failure of the Defendants to put good drainage system in place as a preventive measure to the said flood in Wisdom Estate, Lugbe, Abuja was gross act of negligence.
3. A DECLARATION of this honourable Court that failure of the 1st Defendant (who was the Plaintiff's landlord) and the 2nd

Defendant (who is the manager of the Estate where Plaintiff was a tenant) to disclose material facts to the Plaintiff that Flat B71 is susceptible to flooding or seasonal flooding before the execution of the tenancy contract and at the time Plaintiff paid service charge to the 2nd Defendant amount to concealment of material and fundamental facts affecting the contract.

4. A DECLARATION of this honourable Court that the Plaintiff is not liable to pay the 2nd Defendant any service charge due to concealment of fundamental facts as at the time the service charge was paid.
5. A DECLARATION of this Honourable Court that since the 2nd Defendant collected service from the Plaintiff when he entered the property, it was under obligation to provide such services including but not limited to the security of the life and property of the Plaintiff and his fiancée/dependants that lived with him at Flat B71, Wisdom Estate, Lugbe Abuja throughout their stay in the said Estate.
6. A DECLARATION of this honourable Court that the 1st Defendant who agreed to refund the sum of one hundred and eighty three thousand naira (N183,000) to the Plaintiff, been balance of rent from the period Plaintiff relocated from the apartment due to invasion by devastating flood to the expiration of the rent and had already refunded one hundred and fifty thousand naira (N150,000) leaving outstanding balance of thirty three thousand naira is bound to refund the remaining thirty three thousand naira (33,000) to him.
7. A DECLARATION of this honourable Court that the Plaintiff, his finacee-Ajayi Olamide and his visitors had suffered grave avoidable inconvenience, discomfort, pain, loss of property, interruption and psychological trauma as a result of the negligent and inconsiderate acts of the 1st and the 2nd Defendants.
8. AN ORDER of this honourable Court for the 1st Defendant to immediately refund the Plaintiff the outstanding balance rent of N33,000 having previously refunded N150,000 and promised to refund the remaining N33,000 due to the flood incident that rendered the Plaintiff and his finacee/visitors homeless.

9. AN ORDER of this honourable Court for the 2nd Defendant to refund Plaintiff the sum of fifty thousand naira (N50,000) ie N40,000 the Plaintiff paid on the 15th July, 2020 and the later N10,000 to it by the Plaintiff as Service Charges and to pay for the Plaintiff's property ie laptop and phone that were stolen by burglars who broke into the said apartment while they were sleeping in the night.
10. AN ORDER of this honourable Court for the 1st and 2nd Defendant to jointly and severally pay for all the property of the Plaintiff and those of his fiancée/visitors who were in Flat B71 when the ravaging flood invaded his apartment at Flat B71, Wisdom Estate, Lugbe, Abuja and damaged some property.
11. AN ORDER of this honourable Court awarding the sum of two hundred million naira (N200,000.000) jointly and severally against the 1st Defendant and 2nd Defendant in favour of the Plaintiff for the needless pain, homelessness and psychological trauma occasioned by the negligent and inconsiderate acts and the concealment of fundamental facts from the Plaintiff regarding the nature and suitability of Flat B71 and its surrounding for residential purpose.
12. AN ORDER of this honourable Court awarding the sum of ten million naira (N10,000.000) jointly and severally against the 1st and the 2nd Defendants as cost of litigation.
13. AN ORDER of this honourable awarding(Sic) awarding 10% post judgment interest jointly and severally against the 1st and 2nd Defendants from the date of judgment until the satisfaction of the judgment.

By the records of the Court the Originating processes and hearing notice were served on the Defendants. There is nothing in the records of the Court to show the Defendants filed a Statement of Defence in opposition to the statement of claim.

Trial commenced in the suit on 22/2/2021 with the Claimant testifying in support of his case as CW1 by adopting his Witness Statement on Oath deposed to on 30/11/2020 as his evidence in the case.

In the Statement on Oath he testified inter alia that on the 21st day of June 2019, he rented two bedroom flat apartment as a yearly tenant from the 1st Defendant- Ahemefuna George Best at Flat B71, Wisdom Estate, Lugbe Abuja at the sum of Five Hundred and Fifty Thousand Naira (N550,000.00). The yearly rent ran from the 21st day of June, 2019 to the 21st day of June, 2020. He paid the sum of Forty Thousand Naira (N40,000.00) as Service Charge to the 2nd Defendant. One Mr Valentine linked him with Mr Eyo Ikhenoba who is the agent of Wisdom Estate and Eyo Ikhenoba linked him with the 1st Defendant from whom he rented the two bedrooms flat. Mr Eyo Ikhenoba witnessed the Rent Agreement. On the 11th October 2019, while his fiancée- Ajayi Olamide and he were sleeping in the night in his apartment at Flat B71, the window of the living room of the two bedroom flat was burgled from outside by unknown burglar. The burglar stole some items such as HP laptop pavilion, infinix note 5 with MTN number 08035890675, N20,000.00 cash, chain, engagement ring, toothpaste and charger. He instructed Ajayi Olamide to report the incident to the representative of the 2nd Defendant. She said the 2nd Defendant promised to pay for the stolen items but yet to do so. Upon the expiration of his yearly rent in June 2020, he renewed the rent for six months at the sum of Two Hundred and Seventy Five Thousand Naira (N275,000.00) by transfer and additional two thousand naira for sanitation through Guaranty Trust Bank Plc resulting to total sum of N277,000.00. The 1st and 2nd Defendants didn't disclose to him that Flat B71 containing the 2 bedroom flat he rented is susceptible to devastating seasonal flood due to very poor drainage system and gross negligent. While he was away to Benin, his fiancée-Ajayi Olamide who was in Flat B71, Wisdom Estate informed him on phone on 26th August, 2020 around 5:30pm as follows and he believed her to be true because she lives with him in the house and he left her behind to look after the house in his absent -That on the 26th of August, 2020 at about few minutes to 5pm in the evening, after she returned from work and was resting in company of her sister Adenike Ajayi, their visitor Akingbulugbe Kehinde, they noticed rain was falling and flood from the rain was gathering

outside Flat B71 in Wisdom Estate. Immediately three of them started evacuating the property from the two bedrooms flat to avoid the unknown but while doing so, they realized the flood had risen higher outside the house and was merely wedged by the fence of the house and the door of the living room from entering the house. The flood suddenly broke down the fence and the door of living room and started rushing into the apartment rapidly and in great volume. Some of their belongings were submerged and damaged by the flood despite careful attempt made to salvage them. The flood converged and rose up to the window level and almost drowned them because the drainage system was very poor and there was no good and viable emergence exit or outlet designed for water around the house. That apart from their own property, his properties damaged by the overwhelming flood are some clothes, (1) One DSTV decoder-12,500, (2) one set of chair-120,000 (3) one laptop Del Latitude/xp core 1(3) N46,000 (4) One ZTE universal wifi –N20,000 (5) One Pasun generator-N44,000 (6) One Techno F1 Phone-N12,500 (7) One 1 phone X (2560S)- N350,000 (8) One set of Star Time Television –N37,000 (9) One set of X printer POS machine- N15,000 (10) One set of complete PS 11-N15,000 (11) One set of 54 by 20 Mouka foam and 2 pillows –N80,000 (12) One set of Haier thermocool double door fridge-N70,000 and (13) One IP Numark Scratch – N83,000. Some of the properties were swept away by the flood namely, clothes, star time Television Sky Run led Television, One set of PS11, X printer POS machine and one set of LG 26 inches Television. She- Ajayi Olamide, her sister- Ajayi Adenike and her visitor- Akingbulugbe Kehinde were rescued by some neighbours including the 1st Defendant and Mr Eyo Ikhenoba from the overwhelming flood which almost drowned them, through the Kitchen ceiling which was ripped open. They were graciously accommodated that night by good neighbours because his apartment was already overwhelmed by the flood that broke in forcefully. When he came back, he confirmed the information related to him and demanded that the 1st and 2nd Defendants replace all the items destroyed by the flood and pay some monetary damages but they refused despite the pain suffered. The Defendant lured and deceived him into renting apartment in flood

risk area in Wisdom Estate, Lugbe Abuja because some material facts were concealed from him. Had he known that Flat B71 is susceptible to life and property threatening flood, he wouldn't have rented it. He was amazed that no delegate of the 2nd Defendant came to sympathize with them and access the quantum of damage with a bid to assuage their loss and suffering. He sent his fiancée- Ajayi Olamide to attend the meeting convened three days later by representatives of the 2nd Defendant on Saturday 29th August, 2020. While still away in Benin his delegate- Ajayi Olamide informed him on phone on the 29/08/2020 around 10pm that representative of the 2nd Defendant demanded for another service charge for the year 2020 and failure to pay he will not be allowed to relocate his property from the Estate. That he should approach his landlord for the damage caused by the flood because they sold Flat B71 to him. When he came back from Benin, the Representative of the 2nd Defendant attempted to stop him from relocating from the Estate until he paid N10,000 through the head of Security Unit of Wisdom Estate by name Bawa as part of the second service charge for the year 2020 which is N40,000 despite the fact that he only renewed his rent for six months. Surprisingly the 1st Defendant undertook to pay the balance of N32,000 probably as a set off of the N33,000 the 1st Defendant owes him as balance of the refund of his residual four months rent. Some of the damaged items were repaired by technician of Perfect Cool Technical Works, who issued two invoices to that effect. The items repaired are Coil of Pasun Generator-N25,000, DSTV decoder- N5,000, Haier thermocool Fridge Compressor and gas –N15,000, LG Television-N30,000, LG Home theater panel –N25,000. The total cost of repair of the items. Due to homelessness, the traumatic and devastating impact of the flood and the fear of recurrence, he relocated from Wisdom Estate and lived temporarily with Ajayi Adenike but eventually moved to another apartment elsewhere. Based on his instruction, his lawyer R.F. Olusegun Esq wrote letter of demand to the 1st Defendant- Ahamfele Georgebest and the 2nd Defendant Wisdom Estate Residents Association to pay him Ten Million Naira (N10,000,000.00) as general damages. His lawyer informed him that the Defendants refused to accept the letter upon attempt to

serve them and even stopped his lawyer from entering the Estate to serve the letters. That after incessant demands for one hundred and eighty three thousand naira(N183,000) as four months residual balance of the six months rent paid by him, the 1st Defendant eventually refunded the sum of one hundred and fifty thousand naira (N150,000) and yet to pay the balance of N33,000. The traumatic and devastating flood would have been avoided if necessary care and good drainage systems were put in place prior to the citing and construction of Flat B71 in flood risk area. His fiancée, visitor and himself suffered untold hardship, loss of valuable property, inconvenience, psychological trauma and temporary homelessness as a result of the devastating and life threatening flood occasioned by the thoughtless, careless and negligent acts of the 1st and 2nd Defendant.

The witness tendered the following documents in evidence:

1. Lease Agreement dated 21st June 2019 admitted as Exhibit A.
2. Service Charge payment receipt dated 15th July 2019 admitted as Exhibit B
3. Claimant's statement of account for renewal of rent for six months period on 25th June 2020 admitted as Exhibit C.
4. Receipts for Claimant's damaged properties admitted as Exhibits D1, D2, D3,D4,D5,D6,D7,D8,D9,D10,D11 & D12 respectively
5. Receipts for Sky Run Led Television and LG 26 inches television admitted as Exhibits E1 and E2.
6. Photocopy of Receipt part payment of another service charge admitted as Exhibit F.
7. Letters of Complaint/Demand/Pre Action Notice dated 31st August 2020 written by Claimant's lawyer to the 1st and 2nd Defendants respectively admitted as Exhibits G1 & G2.

The Defendants were not in court on the next adjourned date to cross examine CW1 despite opportunity given and hearing notice served on them. Their right to cross examine CW1 was consequently foreclosed.

The Claimant next called Ajayi Olamide who testified as CW2 by adopting her witness statement on oath deposed to on 30th November 2020 as her evidence in chief.

Her evidence was a replication of the evidence of the CW1 as disclosed in his Witness Statement of Oath. She repeated and replicated the evidence of the CW1 but this time from her perspective and with respect to how she witnessed the flooding of Flat B71 and properties damaged by it on 26th August, 2020.

She tendered two invoices dated 27/10/2020 issued by Perfect Cool Technical Works for repairs admitted as Exhibits H and I. She also tendered Photographs of the flooding and damages done by it to the Claimant's property admitted as Exhibits J1 to J6.

The Defendants were not in court on the next adjourned date to cross examine CW2 too despite opportunity given them and hearing notice served on them. Their right to cross examine CW2 was consequently foreclosed.

The Claimant next called Ajayi Adenike who testified as CW3 by adopting her witness statement on oath deposed to on 30th November 2020 as her evidence in chief.

She also repeated and replicated the evidence of the CW1 but this time from her perspective and with respect to what she witnessed and damages incurred from the flooding especially the on the Asus Laptop model. She tendered an invoice dated 8/5/2020 admitted as Exhibit K.

The Defendants were not in court on the next adjourned date to cross examine CW3 despite opportunity given them and hearing notice served on them. Their right to cross examine CW3 was also foreclosed.

With these the claimant closed his case and the case adjourned for Defence. The Defendants were not in court to conduct their defence

and no written explanation for their absence. Upon the claimant's counsel's application their right to defend this case was foreclose.

With the above the Claimant's counsel in his address relying on Order 10 Rule 5 of the Rules of Court 2018 urged the court to proceed and enter judgment in favour of the Claimant. On the position of the law that the court cannot wait for a party forever to present his or her case. He commended to the court the cases of MAINSTREET BANK LTD V. JAMMAL STEEL LTD (2016); MFA & ANOR V. INONGHA (2014) LPELR-22010(SC).

I have considered the evidence of CW1 to CW2. The cardinal issue that calls for determination in this case is whether or not the Claimant had made out a case to justify a grant of the reliefs sought in the Statement of Claim.

The settled position of the law in our adjectival legal jurisprudence is that in a civil cause where a party asserts a state of affair and desires the Court to make a favourable finding or pronouncement on it, the burden of proof first lies on him to lead preponderance of evidence in proof of it lest he fails. The burden of proof is not static but it shifts from party to party until the issue in contention is resolved. The evidential burden is always on the party who will fail where further evidence, where necessary, is not adduced. See: Sections 131 to 133 of the Evidence Act 2011; ***IMAN V SHERIFF (2005) 4 NWLR (PT. 914) P. 80; LONGE V FBN PLC (2006) 3 NWLR (PT. 967) P. 228 and ELIAS V OMO-BARE (1982) 5 SC P. 25.***

As aforesaid the originating processes in this suit were served on the Defendants as well as hearing notices for the Defendants to avail themselves the opportunity to defend themselves but they fluffed same away.

As shown by records, the Claimant filed and served his statement of claim on the Defendants but the latter did not file and serve a statement of defence in opposition despite the opportunity they had.

The Claimant also through the CW 1, CW2 and CW3 led evidence in support of his pleadings but the Defendants who were afforded opportunities did not cross examine the witnesses on their testimony. The implication of the Defendant's failure to file and serve a statement of Defence in opposition to that of the Claimant in the eyes of the law is that they accepted the facts averred therein. Likewise the implication of their failure to cross examine the Claimant's witnesses on their testimonies is that same is admitted by the Defendant.

In the circumstance, the position of the law is that the burden of proof on the Claimant to establish his claims is deemed discharged on minimal evidence. See CONSOLIDATED RESOURCES LTD V. ABOFAR VENTURES (NIG) LTD (2007) 6NWLR (PT 1030)P221; NIGERIA CUSTOMS SERVICE V. BAZUAYE (2006) 3NWLR (PT 967)P 303.

To determine if the Claimant has proved its case on minimal evidence as required of him in the circumstances, I have examined the evidence of CW1, CW2 and CW3 particularly exhibits A, B C and F. I am satisfied upon perusal of Exhibit A that the Claimant took up a yearly lease/rent agreement with the 1st Defendant from 21st June 2019 to 21st June 2020 for Flat B71 containing two bedrooms at Wisdom Estate and by Exhibit B and C the Claimant also paid service charges. These gave the claimant the right to enjoy tenantable, secured and peaceful premises free from any exposure to damages or threat to damages of property. I have also considered the evidence of the Claimant that the Defendants rented the premises to him knowing that it has a very poor drainage system and susceptible to flooding as well as his evidence on refund of the outstanding rent and stolen items. Also his evidence that flooding would have been avoided if good drainage system were put in place. Exhibit D1 to D12 and E1 to E2 are receipts for Claimants damaged properties by flood while Exhibits H, and I are receipts for repairs carried out on some of the Claimant's properties damaged by the flood. Exhibit K is receipt for damaged laptop. To show the gravity of damage caused by the flood as result of lack proper drainage system and building in a flood prone area Exhibits J1 to J6 which are photographs of the flood were

tendered. I have gone through all the exhibits and I am convinced the Claimant has made a case to justify a grant of the reliefs sought. Consequently the sole issue raised above is resolved in favour of the Claimant. In the light of this reliefs nos 1,2,3,5,6 and 7 are hereby granted. The 1st Defendant is hereby ordered to refund the sum of N33,000.00 being the outstanding balance rent paid by the claimant but not utilized due to the flood incident. The Defendants are ordered jointly and severally to pay the Claimant damages assessed and fixed at not N200,000,000.00 but N1,100.000.00.

Relief no 12 cannot be granted because it falls in the realm of special damages which must be proved specifically. There is no evidence led in this regard. Besides, the Court of Appeal in **GUINNES NIG PLC V NWOKE (2000) LPELR-6845(CA)** did hold that it is unethical and against public policy to pass on the burden of legal or professional fee in litigation to the adversary. Relief No 12 is hereby refused.

With respect to relief No. 13 of the Writ of Summons, Order 39 Rule 4 of the Rules of Court 2018 gives the Court a discretion to grant post judgment interest on the judgment sum at the time of judgment or afterwards at a rate not less than 10% per annum. The Court being so enabled, the Defendants are ordered to pay interest on the above mentioned judgment sum at the rate of 10% per annum from today till liquidation of the judgment debt.

The Claimant having succeeded shall be paid a cost assessed and fixed at N50, 000.00 by the Defendants jointly and severally.

Signed
Hon. Judge
31/3/2021

LEGAL REPRESENTATIONS:

- (1). R.F. Olusegun for the Claimant.
- (2). No Legal Representation for the Defendants.

