

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

THIS 30th DAY OF MARCH, 2021

BEFORE HIS LORDSHIP: THE HON. JUSTICE A.A FASHOLA

SUIT NO CV/3389/2020

BETWEEN:

TABEAL DAH BIKI.....PLAINTIFF

AND

SIR INNOCCENT IJEOMA..... DEFENDANT

JUDGMENT

This is an application commenced by an Originating Summons dated and filed on the 9th day of December 2020. The Plaintiff's asking for the determination of the following questions.

1. whether the power of Attorney dated the **19th/08/2020** Having been duly entered and executed by the parties and/or whether clause 1 of the said power of Attorney which state that immediate ownership and possession of the said property be given to the plaintiff does not bind the parties
2. Whether the defendant having assigned his entire unexpired residue of term over the property known and described as **Plot No EH33, House 14 close 10 Drive 5, 2nd Gate in Prince and Princess Estate** can withhold possession of the same without

handing over to plaintiff in line with the express content of agreement reached and executed?

3. Whether the defendant having assigned his entire unexpired residue of term over the property known and described **as plot No EH33, House 14 Close 10 Drive 5, 2nd Gate in prince and princess Estate** can still maintain and /or put a tenant in the same property?
4. Whether the defendant's blatant failure to deliver possession of all that property known and described **as plot No EH33, house 14, close 10 Drive 5, 2nd Gate prince and princess Estate** after the due execution of the of the provisions of **clause 4** of the deed of Assignment dated the **19th /08/2020** does not amount to a breach of contract and a violation of the provisions of **clause 4** of the deed of assignment executed by the parties as well as clauses **1,8, and 10** of the Irrevocable power of Attorney.
5. Whether the plaintiff is not entitle to claim damages against the defendant for breach of contract and /or holding over possession of all that property known and described as **plot No EHH33, House 14 close 10 drive 5, 2nd Gate prince and princess Estate.**
6. Whether the plaintiff is not entitle to receive the rent payable over the property known and described as **plot No EH33, House EH33, House 14 close 10 drive 5, 2nd Gate prince and princess Estate** for the entire period on which the defendant withheld the possession of the period on which the property after the due execution of the power of Attorney and deed of Assignment dated the **19th /08 /2020?**

HAVING REGARDS TO THE FORGIONG – QUESTION, THE PLAINTIFFS CLAIM THE FOLLOWING RELIEFS:

- a. A DECLARATION THAT** the power of Attorney dated the **19/08/2020** having been duly entered in to and executed by the parties and clause 1 of the said power of Attorney which states that immediate ownership and possession of the said property be given to the plaintiff binds the parties in this suit.
- b. A DECLARATION THAT** the defendant having assigned his entire unexpired residue of term over the property known and described as **plot No EH33, House 14 close 10 Drive 5, 2nd Gate in prince and princess Estate** cannot withhold possession of the same without handing over to plaintiff in line with the express content of the agreement reached and executed by the parties in this suit.
- c. A DECLARATION THAT** the defendant having assigned his entire unexpired residue of term over the property known and described as plot No EH33, House 14, close 10 Drive 5, 2nd Gate in prince and princess Estate cannot still maintain and /or put a tenant in the same property for all intent and purposes.
- d. A DECLARATION THAT** the defendants' blatant failure to deliver possession of all that property known and described as **Plot No EH33, House 14, Close10 Drive 5, 2ND Gate prince and princess Estate** After the due execution of the deed of Assignment dated the **19TH /08/2020** Constitute a branch of contract and a violation of provisions of **Clause 4** of the deed of assignment as well as clauses **1,8, and 10** of the irrevocable power of Attorney executed by the parties.
- e. A DECLARATION THAT** the plaintiff is entitle to claim damages against the defendant for breach of contract and /or holding over possession of all that property known and

described as **Plot No EH33, House 14, close 10 Drive 5,2nd Gate prince and princess Estate**

- f. A DECLARATION THAT** the plaintiff is entitle to the **monthly payment of N200, 000.00 (Two Hundred thousand Naira only)**as rent over the property known and described as **Plot No EH33, House 14, close 10 Drive 5,2nd Gate Prince and Princess Estate** for the for the entire period on which the defendant withheld the possession of the property after the due execution of the power of Attorney and deed of Assignment dated the **19TH /08/2020** till when vacant possession of the premises is delivered to her.
- g. A DECLARATION THAT** the defendant is under a legal obligation to indemnify the plaintiff against all costs, damages and /or expenses incurred in line with clause 3 of the deed of assignment executed by both parties
- h. DAMAGES** in the sum of **N3, 500,000.00 (Three Million Five Hundred Thousand Naira only)** for breach of contract, loss of earnings and psychological trauma caused to the plaintiff by the various acts of the defendant.
- i. The sum of N1, 000,000.00 (One Million Naira only)** being the cost of filling this suit.

Also filed along the Originating Summons is a 26 paragraphs affidavit deposed to by one **Mrs Tabeal Dah Biki** the applicant annexed are Exhibits A to K respectively

1. Exhibit A is an Acknowledgement Receipt dated 27/7/2020
2. Exhibit B is a Power Of Attorney dated 27/7/2020
3. Exhibit C is a Deed Of Assignment dated 19th day of August 2020
4. Exhibit D is a Prince and Princess Cash Receipt dated 24/07/2020

5. Exhibit E is a Prince and Princess Transfer of Ownership Form dated 1/9/2020
6. Exhibit F is a Prince and Princess Letter of Allocation dated 8th September 2020
7. Exhibit G is a Receipt dated 30th April 2019
8. Exhibit HI is a Letter of Demand dated 28th October 2020
9. Exhibit J is a letter of Demand dated the 25th day of November 2020
10. Exhibit K is a payment invoice dated 8/30/2020

In support of the application for the Originating Summons learned counsel filed a written address dated and filed 7th day of December 2020 wherein he formulated 6 issues for determination of this Honourable Court to wit:

- 1. Whether the power of Attorney dated the 19th/ 08/2020 having been duly entered into and executed by the parties and/or whether clause 1 of the said power of Attorney which stated that “immediate ownership and possession” of the said property be giving to the plaintiff does not bind the parties?**
- 2. Whether the defendant having assigned his entire unexpired residue of the term over the property known and described as Plot No EH33, House 14, Close 10 Drive, 2nd gate in prince and princess estate can withhold possession of the same without handing over to the plaintiff in line with the express content of the agreement reached and executed?**
- 3. Whether the defendant having assigned his entire unexpired residue of term over the property known and described as plot N0 EH33, House Drive, 2nd gate in prince and princess estate can still maintain and/or put a tenant in the same property?**
- 4. Whether the defendant’s blatant failure to deliver possession of all that property known and described as plot N0 EH33, House Drive 5 , 2nd gate in prince and princess estate after the due**

execution of the deed of assignment dated the 19th/ 08/2020 does not amount to a breach of contract and a violation of the provision of clause 4 of the deed of assignment executed by the parties as well as clause 1, 8, and 10 of the irrevocable power of Attorney?

- 5. Whether the plaintiff is not entitled to claim damages against the defendant for breach of contract and/or holding over the possession of all that property known and described as plot N0 EH33, House 14 close 10 Drive 5 , 2nd gate in prince and princess estate.*
- 6. Whether the plaintiff is not entitled to receive the rent payable over the property known and described as plot N0 EH33, House 14 close 10 Drive 5 , 2nd gate in prince and princess estate for the entire period on which the defendant withheld the possession of the property after the due execution of the power of Attorney and deed of Assignment dated 19th/08/2020.*

Learned Counsel to the plaintiff cited the following cases in support of his argument.

- 1. Abaa Vs Eke& Anor (2015) LPELR-24370(CA)**
- 2. Owners Of The M V Lupex Vs Nigerian Overseas Chattering & Shipping Ltd (2003) FWLR (PT 170) 14-28 AT 1445**
- 3. Akinsaya Vs Ajieri & Ors (1997) LPELR-6327(CA)**
- 4. Aremu & Anor Vs State (1991) LPELR-545(SC)**
- 5. Oluwatuyi& Anor Vs Owojuyigbe& Anor(2014) LPELR- 23529(CA)**
- 6. Amiase Vs Iorliam(2016) LPELP-42962 (CA)**
- 7. Gbadamosi &Ors Vs Akinloye& ors (2013) LPELR-20937(SC)**
- 8. Dr Moses Obajini Vs Mr P.T Adediji(2017) LPELR(CA)**
- 9. PanBisbilder Nig Ltd Vs First Bank Of Nigeria Limited (2000) LPELR-2900 (SC)**
- 10. Obimiami Brick & Stone Ltd V African Continental Bank Ltd (1992) LPELR-2177(SC)**

11. **Prince Tajudeen Olarewaju Vs Sikiru Oyesomi & Ors(2014)LPELR-22695 (SC)**
12. **Gabriel Olatunde Vs Obafemi Awolowo University & Anor (1998) LPELR-2575 (SC)**
13. **Finima Ventures & Anor Vs Chief Young S. Tobin & ors (2011)LPELR-9089(CA)**
14. **Maja Vs Samouris(2002) LPELR-1824(SC)**

The Defendant filed a Notice of Preliminary Objection dated the 3rd day of February 2021, accompany same is an 8 paragraphs affidavit deposed to by one **Elizabeth Tanko** and a written address wherein the defendant formulated a lone issue for the determination of this Honourable Court.

The defendant equally filed a 23 paragraphs Counter Affidavit deposed to by **Sir Innocent Ijeoma** filed also on the 3rd day of February 2021 and a written address in opposition to the Originating Summons filed by the plaintiff.

In his response, Learned Counsel to the Plaintiff filed a 5 paragraphs Counter Affidavit in Opposition to the Defendant's Notice Of Preliminary Objection and a Written reply on point of Law dated the 12th day of February 2021. Learned Counsel also filed a Further and better affidavit in Opposition to the Defendant's Counter Affidavit and a reply on point of Law.

At the hearing on the 16th day of February 2021 learned counsel to the plaintiff of stated that the Defendant counsel filed a notice of preliminary objection , he sought the leave of Court pursuant to order 5 (1) (2) of the High court civil procedure Rule of the Federal Capital Territory 2018 . That the court should deem their processes as regularized before the court, this Application was granted without objection from learned counsel to the defendant. Learned counsel to the plaintiff further applied that the notice of preliminary objection

heard together with the substantive originating application which was also granted. I shall therefore rule on the notice of preliminary objection before moving to the substantive originating Application.

The learned counsel to the Defendant said while moving his notice of preliminary objections that the notice of preliminary objection was brought upon two grounds:-

1. The suit as presently constituted was is incompetent as the mode by which it is commenced is wrong.
2. The suit is an abuse of court process.

Learned defence counsel stated that the notice of preliminary objection is supported by an 8 paragraph affidavit deposed to by one Elizabeth Tanko and further attached is a written address, he urged this Honourable court to grant the Notice of preliminary objection.

In his written address learned counsel to the Defendant distilled one issue for determination of this Honourable court to wit:- **whether the suit discloses a reasonable cause of action and if so whether the purported cause of action is not a triable issue that cannot be commenced by origination summons.**

It is the contention of the learned counsel to the Defendant in the main that cause of action are fact or facts which establish or give rise to a right of action .It is a factual situation which gives a person a right to judicial relief.

Learned counsel contended further that by averments in the affidavit in support of the originating summons, it is the plaintiff's case the plaintiffs is the legal and equitable owner of all that property know and described as three bedroom bungalow and a boys quarters situate at plot NO.EH33 House 14,close 10 Drives 5,2nd gate, Prince and Princess Estate, Abuja. That these facts are words of

plaintiffs against that of the Defendant and cannot be determined by way of originating summons. Learned counsel urged the Honourable court to so hold.

Learned counsel relied on the following cases. In his notice of preliminary objection dated 2nd /02/2021.

- 1. Fred Egbe Vs Hon Justice J.A Adefarasin (1987) 1 N.W.L.R (pt 47) pg 1 at pg 20.**
- 2. Cevron Nig Ltd Vs Lonestar Drilling (2007) 31 N.S.C.Q.R pg 91 Ratio 3.**
- 3. Barr(Mrs) Amanda Peters Pam& Anor Vs Nasiru Mohammed& Anor (2008) Vol.35 N.S.C.Q.R**

On the hand, learned counsel to the plaintiff / Respondent to this Notice of preliminary objection filed a 5 paragraph counter affidavit deposed to by Mrs. Tabeal Dah biki the plaintiff in this case.

Learned counsel attached a written address dated the 9th /Dec/2020 In his written address , learned counsel formulated one issue for the determination of this Hon. Court to wit :-

- 1. Whether the suit herein discloses a cause of action that can be commenced by way of originating summons.**

Learned counsel to the plaintiff / respondent to this Notice of preliminary objection contended in a nutshell that the crux of this suit emanated from the execution of an irrevocable power of Attorney and deed of assignment signed by both the plaintiff and the defendant for outright sale of the property known and described as a three bedroom bungalow and a boys quarters situate at plot No.EH33, House 14, close10, drive 5, 2nd gate Prince and Princess Estate, Abuja.

He argued that the plaintiff sought the interpretation of the extant paragraphs of agreements in support of the fact the defendant has

failed and /or neglected to hand over immediate ownership and possession of the said property as agreed. That the position of the law is that actions can be commenced by originating summons where there are no radical conflicts of facts especially the plank of the suit rests on the construction of written law, instrument, deed, and contract etc.

Learned counsel to the plaintiff urged this Honorable court to discountenance the notice of preliminary objection filed by the defendant in this suit.

I have carefully considered the notice of preliminary objection of the defendant / applicant and the submission of counsel as well as the judicial authorities cited, I find that issues for determination as canvassed by both counsel are materially the same. In view of this, I shall be adopting the issue raised by learned counsel to the defendant / applicant .In doing so, I shall refer to the salient Points as discussed by both counsel. In that vain the issue that arose for determination is whether:-

This suit discloses a reasonable cause of action and if so whether the purported said of action is not triable issue that cannot be commenced by originating summons.

On whether this suit discloses a reasonable cause of action, In determining whether there exist a reasonable cause of action the court is to confine itself to the writ of summons and the statement of claim . the originating summons see the case of **HOLEC projects (Nig) Ltd Vs International Ltd (1999) 6 NWLR (PT .607)490 at 500.**

It is the position of the law that in determining whether the claimant's action discloses any cause of action or of the nature thereof, the court will necessarily restrict itself to the claimant's statement of claim without recourse to the defendant statement of Defence. See

the case of **SEVEN UP Bottling Company Vs Abiola & Sons (2001)13 NWLR (PT.730) 469 at 495.**

A reasonable cause of action means a cause of action with a reasonable cause or chance of success when only allegations in the pleading are considered. So long as the pleadings disclose some cause of action, or raises some question fit to be decided by a judge, a reasonable cause of action is disclosed. See the case of **Yusuf V Akindipe (2000)8 NWLR (PT. 669) at 386** In the instance case, a careful perusal of the plaintiff/Respondent's counter affidavit to the defendant's notice of preliminary objection particularly paragraphs 4 and 5 would show that there is a reasonable cause of action I so Hold.

On the second leg of the issue raised above for determination i.e Whether the purported cause of action can be commenced by Originating (application) summons?

The position of the law is that originating summons may be used to commence an action where the issue involved is one of the construction of a written law instrument, deed, will or other document or some question of pure law or where there is unlikely to be any substantial dispute on issue of facts between the parties See the case of **Wakwah Vs Ossai (2002) 2 NWLR (Pt. 752) 548 at 561-562.**

Depositions in the respondent's counter affidavit and processes is for construction of or interpretation of the Power of Attorney and Deed of Assignment signed by both the plaintiff and the defendant in this suit. From the above assertions, it is my humble legal opinion that the originating summons was properly commenced before this honorable court by the plaintiff/Applicant, I so Hold.

From all of these, I find that the notice of preliminary objection of the plaintiff/Applicant' dated the 3rd day of February 2021 is lacking in merit; it is hereby dismissed in its entirety.

On his own part, learned counsel to the defendant filed a 23 paragraphs counter- affidavit deposed to by one Sir Innocent Ijeoma filed on the 3rd day of February 2021 and a written address in opposition to the Originating Summons.

Learned Counsel to the plaintiff in moving his Originating Summons dated the 19th day of December 2020 and filed on same date, adopt issues raised in his written address urged the Court to grant their prayers as contained in the originating summons.

The defendant filed a counter affidavit with written address. Wherein the plaintiff filed a further and better affidavit with a reply on point of Law wherein they argued that the submission of the defendant in his counter affidavit is far away from the truth but is prejudicial and that the entire submission is statute barred. That going by the provision of section 196 and 25 of the Evidence Act they are not denying Exhibits A, B, and C and the fact that they have a sitting tenant in the property.

In response, the defendant counsel submitted that the defendant filed a 23 paragraphs Counter Affidavit deposed to by the defendant Sir Innocent Ijeoma. He relied on all the paragraphs of the said counter affidavit.

In line with the rules of this court learned counsel to the defendant said they filed a written address in support of same. Learned counsel adopt same and submitted that the case of the plaintiff lacks merit same being full of self contradictions that the further and better affidavit is not tangible in law as same offends the provision of section 115 of the Evidence Act. He urged the court to discountenance the affidavit in support since they have filed a counter affidavit.

FACTS:

The fact of this matter from the affidavit evidence before this court and the attached exhibits are that the plaintiff is the legal and equitable owner of all that property known as three bedroom bungalow and a boys quarters situate at plot No. EH33, House 14, close 10, drive 5, 2nd gate prince and princess estate, Abuja. She acquires the property from the defendant before the acquisition, she inspected the house wherein the defendant informed her that the present occupant of the property was his tenant, and he would vacate the property before the conclusion of the transaction as rent has since elapsed. Upon the regularization of title (Three Months after the execution of the sale transactions) she demanded for the keys to the property from the defendant, Defendant and his lawyer acted funny. The plaintiff lawyer interacted with the defendant's lawyer, it was discovered that the defendant has a tenant in the said property whose rent has not expired. The plaintiff said that on her meeting with the tenant, the tenant said he had stayed for ten (10) and would leave at his convenience, consequently this suit.

Issues for Determinations:

In the originating summons learned counsel for the claimant formulated six issues for determination

The defendant counsel formulated one issue determination in his written address in opposition to the originating summons dated and filled on 3rd day of February 2021.

In response, learned counsel to the plaintiff filed 8 paragraphs further and better affidavit dated 12 day February 2021 with annexures mark as Exhibit "A" and "a" and a reply on points of law wherein he raise a lone issue for the determination of the court to wit:-

1. Whether the defence canvassed by defendant is not statute barred in line section 169,20 and 27 of evidence Act 2011 and whether this court can allow extraneous facts which are not contained In the parties agreement dated 19th day August 2020 to vary and / or modify the express content of what was signed by the parties .

In regard to the originating summons I will adopt the issues formulated by the plaintiff's counsel and will also refer to the argument advanced by the defendant's counsel.

On issue Number one:-

Whether the power of Attorney dated the 19th/ 08/2020 having been duly entered into and executed by the parties and/or whether clause 1 of the said power of Attorney which stated that “immediate ownership and possession” of the said property be giving to the plaintiff does not bind the parties?.

Learned counsel for the plaintiff argued in the main that parties are bound by the express terms of their agreement especially where same has been reduced into written.

He contended that parties are bound by the provisions of the power Attorney dated the 9th day August 2020 and entered in to with the plaintiff especially clause 1, 8 and 10 which did not only grant of immediate possess on and ownership to the plaintiff but also entitled her to the use and enjoyment of said property.

On This learned counsel refer to the case of **ABBA Vs EKE & Another (2015) LPELR-24370(CA)** Among others.

In answering the above question, it is my humble view that **Exhibit B And C** shall be construe together.

A careful perusal of Exhibit A and B show that they were executed on same date which was 19th day of August 2020 which assign the property to the plaintiff in this action, I find that the ownership and possession of the property known and described as plot No . EH33, House 14 close 10 Drive 5, 2nd gate in prince and princess estate was transferred to the plaintiff in this case by the defendant.

This brings me to the second issue:-

Whether the defendant having assigned his entire unexpired residue of the term over the property known and described as Plot No EH33, House 14, Close 10 Drive, 2nd gate in prince and princess estate can withhold possession of the same without handing over to the plaintiff in line with the express content of the agreement reached and executed?

It was argued on behalf of the plaintiff that till this moment-point- the possession of the said property is still with the defendant since there appears to be sitting tenant who is residing there at the behest of the defendant. Learned counsel submitted that possession of the landed property in law is not evidenced by execution of the title document alone. He relied on the case of **Akinsanya Vs Ajeri & ors (1997) LPELR-6327. C.A** In resolving this issue, it is my legal opinion that there are various types of possession, for example, we have physical and constructive possession. A person may not be in actual possession of a property. But has legal authority over the thing and manifests an intention to exercise dominion and control over the thing either personally or by an agent, he is in constructive possession of it. See the case of **Oluwo Vs B.S Limited (2010) 2 NWLR (pt. 1178) p 310**. The defendant in this action in paragraphs 4 of his counter affidavit in response to paragraph 6 of the plaintiff's affidavit said I stated that before the plaintiff's payment for the house subject of this suit she carried out a thorough search on it and I equally introduced the plaintiff to the occupant whose rent expired on the 31st day of

October 2020 as the prospective landlord". Paragraphs 6, 7 and 8 of the defendant's counter affidavit and even exhibits 9 of the attached with the plaintiff's confirmed the fact that the plaintiff was given a constructive possession by the defendant. Besides, there is nowhere in the instruments executed by both parties that said defendant shall deliver vacant possession to the plaintiff. I so Hold.

On issue Three:-

Whether the defendant having assigned his entire unexpired residue of term over the property known and described as plot N0 EH33, House 14 close 10 Drive, 2nd gate in prince and princess estate can still maintain and/or put a tenant in the same property?

Learned counsel to the plaintiff argued on behalf of the plaintiff that upon the due execution of the deed of assignment between parties, the right of the defendant over the property known and described as plot N0 EH33, House 14 Close 10 Drive, 5th 2nd gate in prince and princess estate Abuja becomes extinguished and as such the defendant obviously will not have any right to sublet to another person by way of lease and/or tenancy. That a party cannot give what he doesn't have. He referred the court to the case of **Amiase Vs IORLIAM (2016) LPELR-42962 C.A** among others. Learned counsel to the plaintiff submits that it will be fraudulent and dishonest for the defendant to make gains out of the property that has his interest to the plaintiff for a valuable consideration and contract duly executed by the parties. He further refer the court to the case of **Gbadamosi & Ors Vs Akinloye & ors (2013) LPELR-20937(SC)** In resolving this issue, as earlier stated in this judgment, from the averments in both the affidavits of the plaintiff and the defendant in this action especially paragraphs 6,7,8,9 and 10 of the plaintiff's affidavit and 4 of her further and better affidavit in opposition to the defendant's counter affidavit confirmed that the plaintiff herein was aware of the fact

that there was a tenant occupying the property and still went ahead to complete the contract of sale of the said property.

A person may decide to sell his premises to another in the course of normal business transactions in that event, the purchaser of the premises becomes the new landlord. Thus where a person has purchased a property he becomes the landlord by virtue of statutory provisions. The plaintiff counsel has failed to by way of hard evidence prove to this court that the defendant in this case having sold the subject matter of this suit collects rent in respect of same. Exhibit G is to the effect that rent of N2,000,000.00 is for the one year rent for a three bedroom apartment and a boys Quarters which commences on the 1st day of November 2019. To terminate on the 31st day of October 2020. The plaintiff failed to place before this court that the defendant received rent on the property after the 31st day of October 2020. On this note, I hereby resolved the issue number four against the plaintiff.

On issue number 5:-

Whether the plaintiff is not entitled to claim damages against the defendant for breach of contract and/or holding over the possession of all that property known and described as plot N0 EH33, House 14 close 10 Drive 5 , 2nd gate in prince and princess estate.

It was argued on behalf of the plaintiff by her counsel in the nutshell that a party who has suffered a breach of a contractual obligation can exercise the option of rescinding same or claim damages for losses he incurred depending on the circumstance of the case. Learned counsel contended that the defendant has violated some clauses that underscore the performance of their Agreement. He submitted that the set of facts that the plaintiff is entitled to damages against the defendant in the circumstances of her claim before this honorable court. Learned counsel place reliance on the

case of **Obimiami Brick & Stone Ltd V African Continental Bank Ltd (1992) LPELR-2177(SC)** That the clear content of paragraphs 21,22,23 and 24 of the affidavit in support of this application depicted the circumstances of the plaintiff's conduct and/or infractions of the defendant in not adhering to terms of the agreement the parties voluntarily entered into. Learned counsel further submitted that Deed of Assignment executed by parties clearly provides for indemnity clause. Learned counsel submitted that the written undertaken by the defendant in that clause entitled the plaintiff to claim damages by way of indemnity on account of any breach of her right to occupy the said premises pursuant to the contract she entered into with the defendant; the hardship, embarrassment, and loss of earning as well as the psychological trauma experienced by the plaintiff.

Learned counsel for the defendant on the issue of damages submitted that on the totality of the plaintiff's case, the plaintiff has not suffered any damages on account of the defendant to warrant the reliefs for payment of damages sought by the plaintiff. That the case of the plaintiff is full of gaps with failure to present any evidence before the court to show the transaction is a contingent transaction. Learned counsel further submits that the transaction between the plaintiff and the defendant is a complete transaction and also a transaction of purchaser of right. and responsibility with no interest left for the seller. On a final note, learned counsel submitted that only documents of transaction are Exhibits A,B, and C. in support of the plaintiff's case and going by Exhibit B in particular which is the Power Of Attorney executed by the defendant in favour of the plaintiff over the property, the subject of this suit is irrevocable power of Attorney. Learned counsel to the defendant drew the attention of the court to contradictions in paragraphs 19, 6, and 12 of the plaintiff's affidavit, he urge the court to resolve the doubts in favour of the defendant. He relied on the case of **Oke Shola Vs The State (2020) 8 NWLR pg**

530 @ pg 536 ratio9 it is trite law that damages are compensation in money, these are sum of money given to a successful plaintiff as a compensation for loss or harm suffered by him . A claim for damages could only arise if there is a breach of any legal duty to the claimant.

See the case of **E.B. plc Awo Omamma V. Nwokoro (2012) 14 N.WLR(P.T.1321)P 488(CA)**. In this case and on a strict construction of Exhibit A.B.& C& the Exhibits placed before this Honourable court, the plaintiff failed to prove the particulars of damage against the defendant . In view of all of the above stated, I find that the claim of the plaintiff for damages against the defendant hereby failed.

On the 6th issue distilled by learned counsel to the plaintiff herein i.e ***Whether the plaintiff is not entitled to receive the rent payable over the property known and described as plot N0 EH33, House 14 close 10 Drive 5 , 2nd gate in prince and princess estate for the entire period on which the defendant withheld the possession of the property after the due execution of the power of Attorney and deed of Assignment dated 19th/08/2020.***

Learned counsel to the plaintiff in his argument relied on the case of **Finima Ventures & Anor Vs Chief Young S. Tobin &ors (2011) LPELR-9089(CA)** among others in canvassing his argument. It is my legal and humble opinion that the principle of Law pertaining the sale of property is anchored on the legal maxim "Caveat Emptor" which literally means "Buyers beware" from the averments of parties as evidenced in their depositions and from Exhibit D it is clear that the tenant's rent is payable on the 31st day of October 2020 and there is no evidence before the court to show that the defendant continues to collect rent from the tenant. It is my respectful opinion however that the tenant who is in possession cannot be in possession in perpetuity. There is no clause in the Power of Attorney or the Deed of Assignment that stipulates that the defendant will pay the plaintiff the rent for the period the tenant holds over. The age long principle

with regards to this is found in the legal maxim “pacta sunt servanda” which literally means parties are bound by their agreement. The defendant in the instant case is therefore not liable to pay the plaintiff the rent for the period the tenant holds over.

In view of the above cited legal authorities and reasons, I find that the originating summons dated the 9th day of December 2020 lacking in merit. It is hereby struck out.

Appearances: parties absent

I.W Zom for the plaintiff

O.M Aikitanyi for the defendant.

Signed
Hon. Presiding Judge
30th/03/2021