IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

THIS MONDAY, THE 1ST DAY OF MARCH, 2021

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/1970/2017

BETWEEN:

STABLELAND ESTATE NIGERIA LIMITED ……PLAINTIFF

AND

IGGO-JORJE INTERNATIONAL LIMITED ……DEFENDANT

JUDGMENT

The Plaintiff's claims against the Defendant as endorsed on the writ of summons and statement of claim filed on 24th May, 2017 are as follows:

(a) An Order of this Honourable Court for the forceful ejection and removal of the Defendant, directors, managers, personnel, officers, agents, representatives, privies and any other person whomsoever from the Plaintiff's Six (6) Bedroom Duplex with Three rooms Boys Quarters, One (1) Bedroom Guest Chalet and a Studio Office situated at No. 8, Nile Street, Maitama District, Abuja, FCT.

(b) An Order of this Honourable Court compelling the Defendant to pay to the Plaintiff Mesne Profits at the rate of N12, 000, 000.00 (Twelve Million Naira) per annum, that is N1, 000, 000.00 (One Million Naira) per month computed from 30th November, 2016 when the tenancy/rent expired till the date the Defendant effectually and completely yields vacant possession of

the said Six (6) Bedroom Duplex with Three rooms Boys Quarters, One (1) Bedroom Guest Chalet and a Studio Office situated at No. 8, Nile Street, Maitama District, Abuja, FCT.

(c) An Order of this Honourable Court compelling the Defendant to pay to the Plaintiff the sum of N4, 000, 000.00 (Four Million Naira) being the unpaid balance of the annual rent of the said property subject matter for the period: 1st December, 2015 – 30th November, 2016.

(d) Costs of filing of suit, service of processes and Solicitor's professional fees for the prosecution of this suit.

The Defendant filed an Amended Statement of Defence and set up a counter-claim against the defendant dated 25th June, 2020 and filed same date as follows:

(i) The sum of N50, 000, 000 as exemplary, punitive and general damages.

(ii) The cost of this suit.

The Plaintiff filed a claimant's Reply to the statement of defence and defence to the counter-claim dated 26th June, 2020 and filed on the same date. The Defendant/Counter-claimant then filed a Reply to the claimants defence to counter-claim dated 7th July, 2020 but filed on 9th July, 2020. The matter then proceeded to trial.

In proof of its case, the plaintiff called only one witness, Mr. Oboh Charles who testified as PW1. He deposed to two (2) witness depositions dated 24th May, 2017 and 26th June, 2020 which he adopted at the hearing. He tendered in evidence the following documents, to wit:

1. Copy of Tenancy Agreement between Stable Land Estate Nig. Ltd and Iggo-Jorje International Ltd was admitted as **Exhibit P1.**

2. Copies of Notice to Quit dated 16th February, 2017 and Notice to tenant of owners intention to apply to recover possession dated 24th February, 2017 and both addressed to the defendant were admitted in Evidence as **Exhibits P2 and P3.**

PW1 was then cross-examined by counsel to the defendant and with his evidence the plaintiff closed its case and the matter was then adjourned for defence. It was at that point that the defendant amended its defence and set up a counter-claim to which the plaintiff then Responded to.

In proof of the defence and counter-claim, the defendant also called one witness, Mr. George Igbo, Managing Director of defendant who testified as DW1. He deposed to two (2) witness depositions dated 25th June, 2020 and 9th July, 2020 which he adopted at the hearing.

He tendered in evidence, the following documents, to wit:

1. Letter dated 16th September, 2016 by the Firm of Charles Oboh & Co. to the defendant was admitted as **Exhibit D1.**

2. The Certified True Copy (CTC) of the Notice of situation of Registered Office of defendant was admitted as **Exhibits D2.**

3. Copy of Tenancy Agreement between Stableland International Ltd and Iggo-Jorge International Ltd dated 5th October, 2011 was admitted as **Exhibit D3.**

DW1 was then cross-examined by counsel to the plaintiff and with his evidence the defendant closed its case.

The plaintiff then called his witness, Charles Oboh (PW1) to adopt his witness deposition dated 26th June, 2020 in support of the Reply to the Amended defence and counter-claim of defendant. He then urged the court to dismiss the counter-claim.

PW1 was then duly cross-examined by counsel to the defendant and with his evidence, the plaintiff closed its case with respect to its defence to the counter-claim of defendant. At the conclusion of trial, parties filed and exchanged final written addresses.

In the final address of defendant, settled by Okwudili Anozie, Esq. dated 25th August, 2020 and filed on 11th September, 2020, three (3) issues were raised as arising for determination to wit:

1. **Whether the claimant's suit is competent?**

2. **Whether the claimant has established any supporting proof to entitle it to the Reliefs it claims in this suit.**

3. **Whether the defendant is entitled to its counter-claim.**

The address of plaintiff was settled by Ikechukwu Ikogwe, Esq. of counsel dated 8th October, 2020 and filed on 9th October, 2020. In the address, two (2) issues were raised as arising for determination as follows:

(1) Whether the Claimant has proved its case and whether its claims are meritorious and worthy of grant.

(2) Whether the Defendant's Counter-claim is credible; whether same was established with credible and reliable evidence and whether it ought to be dismissed with cost.

The defendant filed a reply to the claimants address dated 1st November, 2020 and filed on 26th November, 2020. I have set out above the issues distilled by parties as arising for determination. Issues 2 and 3 raised by defendant are in substance the same issues 1 and 2 raised by Plaintiff even if framed or couched differently. These issues appear to me to be the crux of the issues in dispute that will be shortly determined.

Issue 1 raised by defendant on whether the claim is competent appears to me now largely academic and overtaken by events. The complaint made out here is that the required statutory Quit notices were not properly served on the defendant, at its registered office in Aba, Abia State and that the failure to effect the service properly as allowed by law deprives this court of the jurisdiction to entertain the action.

Now it is important to state that the **pleadings** of parties in each case streamlines precisely the issues or facts in dispute. The primary function of pleadings is to define and delimit with clarity and precision the real matters in controversy between the parties upon which they can prepare and present their respective cases. The pleadings is designed to bring the parties to an issue on which the court will

adjudicate between them. See **Kyari V Alkali (2001) 11 NWLR (pt.274) 412 at 433-434 H-A**.

Now in this case, the defendant categorically averred in its Counter-claim, vide paragraph 5 that it had vacated the property. The evidence of the Managing Director of defendant (DW1) accentuated this position when under cross-examination, he stated as follows:

"… I vacated the premises last year in 2019. I am not sure of the month. I can't remember the month. I remember handing over the keys but I cannot remember the month."

It is clear from the pleadings and evidence of defendant that the issue or question of **possession** on which **Relief (1)** of plaintiff is predicated on is no longer germane. When as a result of exchange of pleadings by parties to a case; a material fact is affirmed by one party and this is not denied by the adversary, then there is no dispute or issue of fact raised. A categorical admission of vacation of the premises as done here by the defendant both in the pleadings and evidence basically puts an end to the matter on the question of proof. Since proof presupposes a dispute and since admission drowns the elements of dispute, proof in such circumstances becomes superfluous. The requirements for issuance of quit notices on defendant to allow for recovery of possession within the ambit of **Section 7 of the Recovery of Premises Act, Cap. 544 LFN 1990** is therefore clearly no longer decisive in the circumstances of this case. If the defendant has given up possession as done in this case, the contention that it was not served notices to vacate the same premises it has already vacated clearly is of no moment, inconsequential and largely now academic. Counsel for the defendant may enjoy the luxury of making submissions not situated within the context of the critical issues that has material bearing on the rights of parties, but the Court with the heavy schedule of work load enjoy no such luxuries.

An issue will be academic where it is merely theoretical as in the present situation with no practical utilitarian value to anyone even if the issue was to be resolved in favour of defendant. See **Plateau State V. A.G. of Federation (2006) 3 NWLR (Pt.967) 346 at 419**. There is therefore no feature preventing this court from exercising jurisdiction to determine the other critical issues presented by this case.

Issue 1 raised by defendant has no legal or factual resonance in the circumstances and shall accordingly be discountenanced.

The important critical point in this case and parties including the defendant recognise this reality is that there is a claim and counter-claim. I had stated these respective claims at the beginning of this jurisdiction. It is trite law that for all intents and purposes, a counter-claim is a separate, independent and distinct action and the counter-claimant like the Plaintiff in an action must prove his case against the person counter-claimed before obtaining judgment on the counter-claim. See **Jeric Nig. Ltd V. Union Bank (2001) 7 WRN 1.**

In view of this settled state of the law, both the Plaintiff and the Defendant have the burden of proving their claim and counter-claim respectively. This being so, the real crux of this dispute should revolve around whether parties have proved their respective claims within clear legal and factual threshold.

In the circumstances, having regard to the pleadings and evidence led by the parties, I am of the considered view that two (2) issues arise for determination as follows:

1. **Whether the plaintiff has proved its case on a balance of probability and therefore entitled to all or any of the Reliefs sought.**

2. **Whether the defendant/counter-claimant has equally proved its case on a balance of probability and therefore entitled to the Reliefs sought.**

The above issues are equally and in substance the same with the subsisting live issues raised by parties. The issues thus raised by court has in the courts considered opinion brought out with sufficient clarity the pith of the contest between parties which shall shortly be resolved by the court.

Now because of the manner some of the submissions were made with seeming disconnect to the pivotal position of pleadings as the critical fulcrum on which the case of parties revolve, it may be germane and apt to make this point at the outset. It is now general principle of wide application that whatever course the pleadings take, an examination of them at the close of pleadings and trial should show precisely what are the issues between the parties upon which they must prepare and

present their cases and which remain to be resolved by court. Any issue outside the template of the pleadings can only but have peripheral significance, if any. In **Oversees Construction Ltd V. Creek Enterprises Ltd & Anor (1985)3 N.W.L.R (pt13)407 at 418,** the Supreme Court instructively stated as follows:

"By and Large, every disputed question of fact is an issue. But in every case there is always the crucial and central issue which if decided in favour of the plaintiff will itself give him the right to the relief he claims subject of course to some other considerations arising from other subsidiary issues. If however the main issue is decided in favour of the defendant, then the plaintiff's case collapses and the defendant wins."

It is therefore guided by the above wise exhortation that I would proceed to determine this case based on the issues I have raised and also consider the evidence and submissions of counsel. In furtherance of the foregoing, I have carefully read the final written addresses filed by parties. I will in the course of this judgment and where necessary make references to submissions made by counsel and resolving whether issue(s) that may have arisen by the submissions(s).

Issue 1

Whether the plaintiff has proved its case on a balance of probability and therefore entitled to all or any of the Reliefs sought.

Now from the pleadings in this case which as earlier stated streamlines the issues in dispute, it is not in dispute that this case revolves around a landlord and tenant relationship; recovery of premises and ancillary reliefs. In this case however and as earlier indicated, the question of **recovery of possession** has been overtaken by events, the defendant having vacated the premises in question. It is however stating the obvious that critical aspects of this admitted landlord and tenant relationship will have significant bearing on all the other Reliefs sought by plaintiff. The critical issue now is whether the plaintiff has made out a case to entitle it to the other Reliefs sought.

Now from the unchallenged evidence before me, it is not in dispute that there is definitely a **landlord and tenant relationship** between parties. The parties

however tendered different tenancy agreements as governing the relationship of parties. The plaintiff tendered **Exhibit P1** as the tenancy agreement that governed the relationship while the defendant tendered **Exhibit D3**.

It appears critical therefore to situate the document or agreement that provided the basis for the mutual reciprocity of legal obligations between the parties, particularly since here, there is no dispute that parties had a landlord and tenant agreement. In resolving this question, it is relevant to take our bearing from the pleadings.

In the statement of claim of plaintiff, it was pleaded as follows:

"3. The Plaintiff is the lessor of Six (6) Bedroom Duplex with Three rooms Boys Quarters, One (1) Bedroom Guest Chalet and a Studio Office situated at No. 8, Nile Street, Maitama District, Abuja, FCT.

4. The Plaintiff avers that it let to the Defendant the said Six (6) Bedroom Duplex with Three rooms Boys Quarters, One (1) Bedroom Guest Chalet and a Studio Office situated at No. 8, Nile Street, Maitama District, Abuja, FCT under a yearly tenancy which commenced on 1st December, 2011 and terminated on 30th November, 2013 as the Defendant let the said property for an initial term of two years.

5. The Plaintiff avers that the annual rent of the said property is N12, 000, 000.00 (Twelve Million Naira), that is, N1, 000, 000.00 (One Million Naira) per month. The Plaintiff hereby pleads the Tenancy Agreement which it entered into with the Defendant at inception and will rely on same at the trial stage.

6. The Plaintiff avers that upon the expiration of the initial term of the tenancy on 30th November, 2013 the Defendant renewed the tenancy for the period: 1st December, 2013 – 30th November, 2014 and then 1st December, 2014 – 30th November, 2015.

7. The Plaintiff avers further that the Defendant further renewed the tenancy for the period: 1st December, 2015 – 30th November, 2016 but the

Defendant made part payment of N8, 000, 000.00 (Eight Million Naira) for this period and promised to pay the balance of the rent, that is N4, 000, 000.00 (Four Million Naira) but failed to make payment until the tenancy period of 1st December, 2015 – 30th November, 2016 expired and remains unpaid till date.

8. The Plaintiff avers further that upon the expiration of the tenancy for the said period: 1st December, 2015 – 30th November, 2016 the Defendant failed to renew the tenancy and consequentially became a tenant-at-will."

In Response, the defendant in its Amended Statement of Defence pleaded as follows:

"2. The Defendant admits paragraphs 2 and 4 of the statement of claim.

3. In reply to paragraph 3 of the statement of claim, the defendant avers that it entered into a tenancy agreement and not a lease agreement covering the said property.

4. In reply to paragraph 5 of the statement of claim, the Defendant avers that the annual rent for the said property was initially N12, 000, 000.00. However, following the attempt of the claimant to review the rent upward to N40, 000, 000 vide its agent's letter dated 16th September, 2016, the rent of the property was renegotiated downward in tune with the prevailing harsh economic to N8, 000, 000.00. The Claimant's agent's letter dated 16th September, 2016 is hereby pleaded and the claimant is hereby given notice to produce the original.

5. The Defendant admits paragraph 6 of the statement of claim to the extent that it paid N12, 000, 000. 00 for each year of this further occupation of the said property after 30th November, 2013 till 30th November, 2015. No new tenancy agreement was entered for this period.

6. In reply to paragraph 7 of the statement of claim, the defendant states that it had paid N8, 000, 000.00 as rent for the period covering 1st December, 2015 to 30th November, 2016, on the understanding between the

defendant's managing director and the claimant's agent, Mr. Charles Oboh, that its annual rent had been reviewed downward to N8, 000, 000.00 in line with the prevailing economic downturn and recession which brought about reduction of property in Abuja."

It is stating the obvious that a party is bound by its pleadings and cannot go outside it to lead evidence or rely on facts which are extraneous to those pleaded. See **Kyari V Alkali (supra) 412 at 433 – 434**.

Now on the pleadings, it is obvious that the defendant in paragraph 2 of his Amended defence clearly admitted paragraph 4 of the statement of claim to the effect that he was a yearly tenant "**which commenced on 1st December 2011 and terminated on 30th November, 2013 as the defendant was let the said property for an initial two years."**

In **paragraph 4 of the Amended defence**, the defendant similarly admitted the averment in paragraph 5 of the statement of claim that the annual rent for the said property was initially N12, 000, 000. It is equally obvious that in paragraph 5 of the Amended defence, the defendant admitted paragraph 6 of the statement of claim that it paid N12, 000, 000 **"for each year of this further occupation of the said property after 30th November, 2013, till 30th November, 2015".**

In the light of the above critical **concessions or admissions** by the defendant, it is clear that the tenancy agreement which reflects the above admissions is the tenancy agreement tendered by the plaintiff vide **Exhibit P1**. This tenancy agreement shows clearly that the relationship between parties commenced on 1st December, 2011 and terminated on 30th November, 2013 at an annual rent of N12, 000, 000 as clearly stated in paragraphs 4 and 5 of the claim which was admitted by the defendant. This agreement was duly executed by both sides and for the defendant, the Managing Director of defendant and DW1 signed or executed the agreement. Again, on each page of the agreement, both the landlord and the tenant signed.

On the other hand, the tenancy agreement vide **Exhibit D3** sought to be relied on by the defendant is completely at variance with facts it has admitted and must as a consequence be held to lack probative value. First, this tenancy agreement is said to have commenced on 1st November, 2011 and terminating on 30th October, 2013 contrary to the admission of defendant that the tenancy agreement commenced on

1st December, 2011 and terminated on 30th November, 2013. Secondly this tenancy agreement show that the rent is N25, 000, 000 which translates to N12, 500, 000 per year which again conflicts with the admission that the yearly rent for the year is N12, 000, 000. It is also obvious that, an attempt was made to alter the rent in long hand from N25, 000, 000 to 24, 000, 000. Crucially unlike Exhibit P1, Exhibit D3 was not executed by the Managing Director of defendant or DW1 and again unlike Exhibit P1, no single page of Exhibit D3 was signed by both landlord and tenant. Exhibit D3 completely lacks credibility and is discountenanced.

The bottom line is that **Exhibit P1** is the **Tenancy Agreement** parties had over the rent of the property in question and it provided the terms governing the relationship of parties. The pleadings and evidence of parties confirms this obvious reality. I so hold.

Having determined critical elements of the relationship, particularly the duration and the rent agreed, this provides basis to situate the legal and factual basis for the other reliefs sought by claimant.

Relief (a) on possession as stated earlier has been overtaken by events. We now deal with the other Reliefs.

Now the next Reliefs sought by plaintiff is for the claim of Mesne Profit covered by Relief (b). The plaintiff claims **mesne profit at the rate of N12, 000, 000 (Twelve Million Naira) per annum, that is N1, 000, 000.00 (One Million Naira) per month computed from 30th November, 2016 when the tenancy/rent expired till the date the Defendant effectually and completely yields vacant possession of the said Six (6) Bedroom Duplex with Three rooms Boys Quarters, One (1) Bedroom Guest Chalet and a Studio Office situated at No. 8, Nile Street, Maitama District, Abuja, FCT.**

I shall equally treat Relief (c) with Relief (b) essentially because facts situated with Relief (b) provides basis to resolve Relief (c).

Relief (c) seeks for an order compelling the defendant to pay to the Plaintiff the sum of N4, 000, 000.00 (Four Million Naira) being the unpaid balance of the annual rent of the said property subject matter for the period: 1st December, 2015 – 30th November, 2016.

Now in law, the expression **"mesne profit''** simply means intermediate profit, that is profit accruing between two points of time, that is the date when the defendant ceased to hold premises as a tenant and the date he gives up possession. See **Agbamu Vs Ofili (2004)5 N.W.L.R (pt.867) 540 at 571; Sabalemotu Vs Muniru Lawal (1994)7 N.W.L.R (pt.356) 263 at 213; Udih Vs Izedonmwen (1990) 2 N.W.L.R (p.t132)357.**

Put in more simple language "mesne profit'' are rents and profits which a tenant who holds over landlords premises after the lawful termination or expiration of his tenancy or a trespasser, has or might have received during his occupation of the land or premises in issue and which he is liable to pay as compensation to the person entitled to possession of such land or premises.

On the authorities, it appears settled that a claim for mesne profit can only be made when the tenancy of the tenant has been duly determined. See **African Petroleum Ltd Vs Owodunni (1991)8 N.W.L.R (pt 210)391; Metal Construction (W.A.) V Aboderin (1998)8 N.W.L.R (pt.563) 568 S.C.**

From the undisputed facts and admitted evidence from the defendant, it is not in doubt that the **annual rent** paid by the defendant for the initial two (2) years from 1st December, 2011 to 30th November, 2013 was **N12, 000, 000 only**. The total amount paid for these two (2) years was **N24, 000, 000** (Twenty Four Million Naira).

On the evidence, it is again admitted ground that when the initial tenancy expired in November, 2013, it was renewed for two years again, clearly on the same terms which extended the tenancy from **30th November, 2013 to 30th November, 2015**. Again on the pleadings and evidence, the tenancy was again renewed for a period of one year from 1st December, 2015 to 30th November, 2016 again on the same terms. The contention by defence counsel that there is no contractual document upon which the defendants rent sum for tenancy can be based as the original tenancy agreement, Exhibit P1 is no longer extant must be discountenanced as lacking legal validity.

It is true or correct that Exhibit P1 the initial tenancy agreement commenced on 1st December, 2011 and terminated on 30th November, 2013. It is equally true as

demonstrated that the defendant subsequently renewed the agreement on the evidence uptil 2016 without any new tenancy agreement been executed.

The law is settled that upon expiration of a tenancy agreement, where a tenant holds over, pays rent and the landlord accepts the rent, the law will recognise such instance as a renewal of the agreement on the same terms and conditions as the original agreement. See **Falought. V First Impression Cleaners Ltd (2014) 7 NWLR (pt.1406) 335; See also Ude V Nwora (1993) 2 NWLR (pt.278) 638**.

The reality is that the defendant cannot seek to shirk from the obligations contained in this Exhibit P1 as regulating the relationship of parties to the clear extant that on the evidence, there is no other established agreement entered into by parties to govern the relationship.

Now it is case of the plaintiff that for the period **1st December, 2015 to 30th November, 2016** the defendant only paid **N8, 000, 000** leaving a balance of N4, 000, 000 which remained unpaid till the tenancy ended in November 2016 and this, again, has remained unpaid till date.

Now in paragraph 6 of the Amended statement of defence, the defendant pleaded as follows:

"In reply to paragraph 7 of the statement of claim, the defendant states that it had paid N8, 000, 000.00 as rent for the period covering 1st December, 2015 to 30 November, 2016, on the understanding between the Defendant's Managing Director and the Claimant's agent, Mr. Charles Oboh, that its annual rent had been reviewed downward to N8, 000, 000.00 in line with the prevailing economic downturn and recession which brought about reduction of property in Abuja."

Now it is trite law that facts deposed to in pleadings must be substantiated and proved by evidence, in the absence of which, the averments are deemed abandoned. See **Aregbesola V Oyinlola (2011) 9 NWLR (pt.1253) 458 at 594 A-B**. Pleadings however strong and convincing the averments may be, without evidence in proof therefore, go no issue. Through pleadings, people know exactly the points which are in dispute with the other. Evidence must be led to prove the

facts relied on by the party or to sustain the allegations raised in the pleadings. See **Union Bank Plc V Astra Builders (W/A) Ltd (2010) 5 NWLR (pt.1186) 1 at 27**.

Now in this case, the defendant who pleaded that there was an **understanding** between the defendants Managing Director and the claimant's agent on reduction of rent did not tender any scintilla of evidence to situate this agreement or understanding allegedly reached on reduction of rent particularly here where the plaintiff denied completely this contention of reduction or review of rent. If several meetings were held as alleged, where is the evidence or records of the minutes of these meetings to support the purported review or reduction? None was supplied by defendant. At the risk of sounding prolix, mere averments in pleadings prove nothing and remain mere averments.

In the absence of any evidence showing that **parties agreed to any reduction**, the bare and empty oral allusion by the Managing Director of defendant that there was a reduction clearly will not fly and is an attempt to alter or vary the clear contents of **Exhibit P1**, the tenancy agreement which has precisely streamlined the annual rent of the property and is therefore inadmissible. There is no room for additions or interpolations to Exhibit P1. See **Section 128 (1) of the Evidence Act**.

It is now settled principle of general application that any unilateral increase or decrease of rent is invalid in law unless there is an agreement to that effect between the landlord and the tenant. A tenancy is a product of Agreement between two parties. Any change or variation must equally be a product of Agreement by both parties. Where a landlord, for example, unilaterally increases his rent, it is at best an offer or proposal and where the tenant refuses to pay the increased rent, the landlord is required to take necessary steps as required by law to terminate the tenancy. See **Udi V Izedonmwen (1990) 2 NWLR (pt.132) 357**. The letter of plaintiff vide **Exhibit D1** to defendant seeking to increase rent must therefore be seen in this light.

The legal position equally applies ***mutatis mutandis*** to a tenant. A tenant cannot equally unilaterally decrease his rent. It is similarly at best an offer or proposal subject to acceptance by the landlord. If the landlord refuses to accept, then the tenant either keeps to the existing rent or peacefully vacate the premises.

On the whole, I find and hold that rent to be paid for the premises remained **N12, 000, 000** (Twelve Million Naira) per annum including for the period **1st December, 2015 – 30th November, 2016**. The implication of this finding is that defendant has a balance of **unpaid rent** or arrears of rent for the year 1st December, 2015 – 30th November, 2016. If the rent is N12, 000, 000 per annum and the defendant paid only N8, 000, 000, there is no doubt still left a balance of **N4, 000, 000** which still remains unpaid as outstanding arrears of rent. This sum is clearly due from defendant to the plaintiff. **Relief (c)** clearly will be availing.

Now back to the mesne profit claim. Since I have found that rent per annum on the premises is **N12, 000, 000** and that there was no proved reduction, it is on the basis of this sum that mesne profit will be computed. It is however important to add that a claim for mesne profit is not a claim for special damages requiring strict or specific proof or indeed any extraordinary proof. The philosophical basis of this specie of relief is to ensure that a defendant who holds over after the expiration of his tenancy and denies the landlord access to his legitimate earnings pays a price or suffers some consequences for holding over. I find support for this in the case of **Oceanic Bank International Plc V Aweto Guest Quarters Hotels Ltd (2011) LPELR – 9110 (CA)** per Ejembi Eko JCA (as he then was) who stated instructively as follows:

"…Mesne profit is not a claim for special damages requiring strict proof or specific proof. It suffices only that the claimant for mesne profit proves his assertion that his tenant held over his premises unlawfully after the termination of his tenancy. The claimant does not have any greater burden of proof under Section 135 – 137 of the Evidence Act. He only needs to prove that the defendant, his tenant, held over the leased property after the termination of his tenancy and that has prevented him from realizing or earning economic rents from the property."

In this case, it is unchallenged evidence, that after the defendant made part payment for annual rent for the year 1st December, 2015 – 30th November, 2016 in the sum of N8, 000, 000, he has not paid the balance or made any further rental payment uptil when he said he left the premises in 2019.

Now by **Exhibit P1**, clause 3 of the tenancy agreement, it was expected that if the tenant wanted to renew the tenancy when it ended on 30th November, 2016, he was expected to deliver in writing at least three months before the expiration, notice that he intends to renew the rent and it is also a condition that there shall be no subsisting breach of the tenants undertaking. Let me perhaps allow clause 3 speak for itself thus:

"PROVIDED that if the Tenant shall be desirous of taking a new Tenancy of the said premise after the expiration of the term hereby granted, they shall deliver to the Landlord's representation/agent a notice in writing thereof at least three months before the expiration of the term hereby granted and if there shall be no subsisting breach of the Tenant's undertakings therein before contained the Landlord at the cost of the Tenant may grant to the Tenant a new agreement of the premises hereby created for a further term of year to commence from and after the expiration of the term hereby granted at a rent to which prior notice shall be given and subject to the terms and conditions herein contained or variations thereof."

The above is clear and self explanatory.

In this case, it is clear that on the evidence, the defendant did not activate this clause, by expressing an intention to renew the tenancy. It is also obvious that on the evidence that the defendant was in breach of its commitments to pay its rent as already dmeonstrated.

As a logical corollary, by a confluence of these facts, the tenancy of defendant was determined by effluxion of time on **30th November, 2016**. Now the law on recovery of premises is clear. **Section 7 of the Recovery of Premises Act Cap 544 LFN 1990 provides the modalities as follows:**

"7. when and so soon 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 which ever 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." (Underlining supplied).

From the above, it is clear that term or interest of a tenant in any premises can be determined in a variety of ways. For example it could be by *effluxion* of time or by a written notice to quit as provided for in forms B, C or D whichever is applicable or as is otherwise duly determined. This point is underscored by the fact that the word "or" is used as underlined above in the said provision.

In law when "or" appears in any provision, it is a disjunctive participle used to express an alternative or to give a choice among two or more things. See **Abia State University V. Anyaibe (1996) 3 N.W.L.R (pt 439) 646 at 661.**

In applying the above provision of **Section 7** to this case, it is clear on the evidence, that after the initial tenancy Agreement ended in 2013, it was subsequently extended on a yearly basis until 2016. As stated above, there is nothing on the evidence to indicate that the defendant renewed the tenancy within the purview of Exhibit P1 or on new terms. What this means is that with the apparent failure to renew the tenancy after it came to an end, the tenancy agreement between parties was duly determined by effluxion of time on 30th November, 2016. The Supreme Court in **Alhaji J.A. Odutola & 1 or V. Paper sack Ltd (2006) 1 NWLR (pt.1012) 470,** stated as follows:

"I hold the considered view 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 affluxion of time and the respondent thereby became a tenant at will to the 1st appellant by remaining in possession of the property. In law, we describe the respondent at that stage as holding over the property and in that capacity it became a tenant at will. The situation of failure to pay rent continued from

1991 to 1997 yet learned counsel and Court of Appeal contends that there was a yearly tenancy."

The point perhaps to underscore at the risk of sounding prolix is that it is indeed common ground that since the expiration of the tenancy in **November 2016**, the defendant has not renewed the tenancy, paid any rent or vacated the premise until sometime in **2019**.

Now the law obviously will not support a situation as in this case where the defendant has obviously profited from a given situation, to wit: the occupation of the demised premises while at the same time they blatantly seek to shirk or renege from its lawful obligations. Any agreement is useless if one party does not respect it or the terms he willingly accepted to be bound by. On the established facts, there cannot be any doubt that the plaintiff is entitled to mesne profit which will be computed from the date the tenancy expired and the defendant holds over the property up to when he vacated same.

The contention by defendant that the failure to pay rent was due to the "protracted impasse between defendant and the landlord's agent over the rent sum" clearly lacks substance. This alleged protracted impasse and how it impacted on payment of rent was not streamlined either in the pleadings or evidence and the court has no jurisdiction to speculate. We cannot therefore allow ourselves to be detained by purely speculative posturing on some supposed impasse as constituting a valid reason not to live up to lawful obligations.

Having found that **N12, 000, 000** is the annual rent per annum for the property due from defendant, any mesne profit claim must be predicated on this sum. In law, the agreed rental value of the property or premises is an important element in the computation of mesne profit where a tenant holds over landlord's premises after the lawful termination or expiration of tenancy. See **Gabari V Ilori (2002)14 N.W.L.R (pt786)78 at 101 D-E.**

If the annual rent is N12, 000, 000 the implication as rightly pleaded by plaintiff and on which evidence was led is that the monthly mesne profit for the property is N1, 000, 000.

As stated earlier, mesne profit usually accrues from when defendant ceased to hold premises as a tenant and the date he gives up possession. It is common ground that on the evidence, the tenancy of defendant ended as far as 30th November 2016. That was when defendant partly paid the years rent for the period 1st December, 2015 to 30th November, 2016. Since the expiration of this agreement, the defendant has neither renewed the agreement or paid rent but continued in occupation until sometime in 2019. The question now is when did he give up possession of the premises?

I had earlier alluded to the evidence of the sole witness of defendant who stated under cross-examination that he had vacated the premises sometime in **2019** but that he cannot remember the month he left. Unfortunately the plaintiff in this case did not either in their pleadings or evidence state clearly the month when the defendant vacated the premises. The plaintiff agreed and stated both in their pleadings and evidence that the defendant voluntarily vacated the property but again, no where did they state when defendant left or vacated the premises. See paragraphs 9 and 15 of claimant's reply to the statement of defence and defence to the counter-claim. The witness of claimant reiterated this position in paragraphs 7 and 15 of his additional deposition. There is therefore here no clarity with respect to when defendant left the premises and the court cannot speculate. Even though, the claim for mesne is not a claim for special damages requiring strict proof, as stated earlier, there must however be a clear demonstration by the pleadings and most importantly evidence as to when a tenant ceased to hold premises as a tenant and the date he gives up possession to allow for a fair calculation or computation of the award of mesne profit. The address of counsel is no conduit to carry out such a critical exercise. Indeed the address of counsel is no more than a handmaid in adjudication and cannot take the place of the hard facts required to constitute credible evidence. No amount of brilliance in a final address can make up for lack of evidence to prove and establish or disprove and demolish points in issue. See **Iroegbu V M.V. Calabar Carrier (2008) 5 NWLR 13 (pt.1079) 147 at 167; Tapshang V Lekret (2000) 13 NWLR (pt.684) 381**. The court will accordingly award **mesne profit** in this case on the basis of clear facts donating the period the defendant held over the premises which is for a period covering **1st December, 2016** to at least the end of **December 2018**.

On the basis of the existing agreement and evidence, the defendant is due to pay for mesne profit over these periods, when he occupied the premises without paying rent:

1. 1st December 2016 – 30th November 2017 – **N12, 000, 000** (N1, 000, 000 for each month).

2. 1st December 2017 – 30th November, 2018 – **N12, 000, 000** (N1, 000, 000 for each month).

3. December 2018 – **N1, 000, 000**.

As stated earlier, the defendant may have vacated the premises sometime in 2019, but there is no clear evidence as to when that happened. The total sum due to the plaintiff as mesne profit of over the property as streamlined above is the total sum of **N25, 000, 000** (Twenty Five Million naira only).

This sum therefore represented the appropriate mesne profit over the period clearly established by evidence that the defendant held over the property until they vacated the premises. This appears to me a fair recompense to the plaintiff in the circumstances covering the period the defendant held on to the premises and which the court can properly grant. In **Agbamu V Ofili (2004) 5 NWLR (pt.867) 450 at 572 D-G** Augie JCA (as she then was) stated as follows:

"If the Appellant is still in possession, and the award of mesne profits upheld, the mesne profit will be calculated up to the date he gives up possession. If the Appellant has given up possession and the award of mesne profit is upheld, the mesne profit will be calculated up to the date he gave up possession."

Relief (b) therefore has merit subject of course to the reduction in the amount claimed. Having already treated **Relief (c)**, I proceed now to the final **Relief (d)** for costs of filing of suit, service of processes and solicitors professional fees for the prosecution of this suit.

Unfortunately, on the evidence, nothing was put forward by plaintiff to situate or provide basis to award any part or arm of this Relief. Nothing was presented in evidence situating cost of filing this suit, service of process and solicitors fees and

the court, again cannot speculate. The address of counsel no matter how beautifully articulated is no substitute for evidence. These Reliefs cannot be awarded at large or on speculations or sentiments. It must be supported by evidence of probative value. No such evidence was produced here. On the whole, pursuant to the provision of **Order 56 Rule 1 (3) of the Rules of Court**, the sum of **N25, 000** will be awarded as cost of the action. The case of plaintiff having succeeded to a large extent, the cost awarded appears to me reasonable recompense as cost of the present action.

On the whole, the sole issue raised with respect to the Plaintiffs' claims succeeds in part.

This now leads to the second issue relating to the **Counter-claim of defendant** and whether it is availing. It is trite principle that a counter-claim is a cross or independent action distinct and separate from the main action. As stated earlier, the counter-claim like the substantive claim must be established by credible evidence.

Now the Reliefs sought by the counter-claimant is for:

1. The sum of N50, 000, 000 as exemplary, punitive and general damages.

2. The cost of this suit.

The basis of this claims can be situated on the following paragraphs of the counter-claim as follows:

"2. The defendant states that while these proceedings were going on, the claimant through his lawyer, Mr. Ikechukwu Ikogwe, enlisted the services of Policemen from Maitama Police Station to harass, intimidate and detain the managing director of the Defendant.

3. The Claimant, through his lawyer, alleged that he Defendant's managing director stole items and fixtures that consist the property that was leased to the Defendant for which this suit was instituted for recovery of the premises thereof.

5. **The Claimant, through his lawyer, harassed, intimidated and threatened the counter claimant's managing director with the aid of the police authorities causing him to forcefully vacate the property.**

6. **The Claimant and his lawyer carried out their act of using the police authorities to intimidate, harass and threaten the Defendant/Counter claimant's managing director notwithstanding these proceedings were going before this Honourable Court for the recovery of the premises.**

7. **In the course of the harassment of the Defendant's managing director, he was informed that the claimant's lawyer had instituted a direct criminal proceeding against him in an Area Court in Abuja, however the Police and the Claimant's lawyer refused to serve him with a copy of the alleged charge and rather used to threaten the Defendant's managing director with imprisonment."**

The substance of the above complaints clearly is targeted at the **Managing Director of Defendant**, **George-Igbo** who testified as **DW1**. The infractions complained of were specific to the person of **George Igbo**.

Now it is stating the obvious that **Mr. George Igbo** is not a party to this action and is not the Defendant/Counter-claimant. He may be the Managing Director of Defendant but that does not transform or turn him to be the defendant on Record. Indeed in **paragraph 2** of the statement of claim, the defendant is described as a private limited liability company incorporated and registered under the Companies and Allied Matters Act, 1990. The defendant in **paragraph 2** of its Amended defence unequivocally admitted this paragraph.

The legal consequence of this admitted position is that once a **company such as defendant** is incorporated under relevant laws, it becomes a separate and distinct person from the individuals who are its members. It has capacity to enjoy legal rights and is subjected to legal duties which do not coincide with that of its members. Such a company is said to have legal personality and is always referred to as an artificial person.

Consequently, it can sue and be sued in its own name. It may own property in its own right, and its assets, liabilities, rights and obligations are distinct from that of its members. See **New Res. Int'l Ltd V Oranusi (2011) 2 NWLR (pt.1230) 102**.

The bottom line is that on the pleadings and evidence, the **defendant/counter-claimant** is a **distinct personality** from the **M.D.** The M.D., **Mr. George Igbo** is not a party or defendant to this action and it is therefore difficult to situate how the complaints or infractions targeted at his person can amount to infractions against defendant, a distinct person in law, so as to serve or provide a legal or factual basis to ground a cause of action or the extant counter-claim.

The point to underscore is that subject to certain exceptions, the proper claimant in an action in respect of a wrong alleged to be done to a company or an association of persons is the company or the association of persons itself and not a shareholder or member of the association. Where a member or shareholder takes on such a task, such a shareholder or member would only be fighting the suit for which he has no **locus**. See **Onuekwusi V. The Registered Trustees of the Christ Methodist Zion Church (2011) 6 NWLR (pt.1243) 341 at 361 – 362 H-A**.

By the same token, any infractions or wrong committed against **Mr. George Igbo**, the proper claimant or complainer in such a situation, must be **Mr. George Igbo** and not any other person. The bottom line and again at the risk of sounding prolix is that the violations complained of here are specific to **George Igbo**. Since he obviously is not a party to the substantive action, the alleged violations of his civil rights cannot form the basis of the extant **counter-claim**. The defendant/counter-claimant clearly has no standing to sue in respect of purely personal complaints of its Managing Director, George Igbo. The court can only properly exercise jurisdiction over a suit when the plaintiff (here the defendant/counter-claimant) has standing to sue. Where a plaintiff lacks locus standi, the Court will equally lack the jurisdiction to entertain the matter notwithstanding that the claim is within the jurisdiction of the Court. In the case of **Green V Green (1978) 3 NWLR (pt.61) 480 at 500**, the Supreme Court (per Oputa JSC) put the law succinctly in the following terms:

"If a plaintiff is incompetent to bring the action, the Court as well will not be competent to hear an incompetent plaintiff for then the action would not have

been brought upon fulfillment of a condition precedent to the exercise of the court's jurisdiction."

The extant counter-claim stands compromised *abinitio*.

The conundrum here is even if the complaints of unlawful harassment, intimidation and detention of **George Igbo** has any merit and on the evidence, there is really nothing to support the complaints beyond bare challenged oral averments, it is difficult to see how an award can be made for the **defendant** who did not make any such specific complaints against it as a distinct legal body.

Even if I am wrong above, the only point of interest to address here is the question of the alleged forceful vacation of the defendant from the property. Here again no credible evidence was put forward to situate this forceful vacation of the property. It is really strange that since the property was used for commercial business (furniture) that nobody was brought forward by the defendant to lend credence to the fact that police authorities were used to make defendant forcefully vacate the premises. What happened to the workers at the furniture shop? Did they simply disappear into thin air? Why did not a single worker give evidence with respect to how they were made to forcefully leave the property? Who are even these police officers? From where or which division did they come from? No answers were supplied to these critical questions. It is also strange that the defendant did not lay any form of complaint to higher authorities for the alleged excesses of the men of Nigeria Police. It is therefore not enough to simply mention the name police without providing any evidence to show or establish any infractions. The court cannot make decisions on infractions of civil rights on the basis of a complete lack of evidence or completely unclear evidence at best.

Again under cross-examination, DW1 and Managing Director of Defendant said he handed over the keys to the plaintiff and he could not even remember when. Further that sometime in March 2020, he returned the electrical fittings that he removed from the property.

If DW1 was made to forcefully vacate the premises, by **"police authorities",** then it does not appear to me rational or reasonable that he won't remember when it happened and also he will freely hand over the keys and be allowed to even take

away electrical fittings and properties which do not belong to him which he later returned.

As a logical corollary, the allegation of forceful vacation said to have been occasioned by "police authorities" was not in any manner creditably established. In the absence of any proved wrong doing, it is difficult to then situate the factual and legal basis of damages of any kind as claimed by the defendant/counter-claimant.

The bottom line is whether on the basis of lack of proper party or whether it is on the basis of complete lack of credible evidence to situate the counter-claim, the extent counter-claim clearly has not been established on a preponderance of evidence and must accordingly fail.

On the whole, the issue raised with respect to the counter-claim is resolved against the Defendant/Counter-claimant.

In the final analysis and for the avoidance of doubt, I hereby make the following orders:

ON PLAINTIFF'S CLAIMS/RELIEFS

1. **Relief (a) having been overtaken by events is struck out.**

2. **The Defendant is ordered to pay claimant the sum of N25, 000, 000 (Twenty Five Million Naira) as Mesne profit at the rate of N1, 000, 000 (One Million Naira per month) computed from 30th November, 2016 immediately following the expiration of the tenancy up to the end of December, 2018.**

3. **The Defendant is ordered to pay the plaintiff the sum of N4, 000, 000 (Four Million Naira) being the unpaid balance of the annual rent of the property subject matter for the period 1st December, 2015 – 20th November, 2016.**

4. **I award cost assessed in the sum of N25, 000 payable by defendant to the plaintiff.**

ON DEFENDANT'S COUNTER-CLAIM

The Defendants counter-claim fails in its entirety and is accordingly dismissed.

…….
Hon. Justice A.I. Kutigi

Appearances:

1. **Ikechukwu Ikogwe, Esq., for the Plaintiff.**

2. **Okwudili Anozie, Esq., for the Defendant/Counter-Claimant.**