

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY, THE 16TH DAY OF JULY, 2021

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO. FCT/HC/CV/2775/19

ENGR. OLAKUNLE OLAOSEBIKAN.....CLAIMANT

AND

HIDTMA JAGRIS.....DEFENDANT

JUDGMENT

In a writ filed on the 30/1/19 the Plaintiff-Engr. Olakunle Olaosebikan claims the following against Hidtma Jagris

1. An immediate possession of all the 4 Bedroom Duplex and 3 Bedroom Flat situate at No. 3 Udo Udoma Street, Asokoro, Abuja.
2. Arrears of Rent of N 28.5 Million only from June, 2016 to 30 August, 2019.

In the Alternative

Means profit at the rate of N750,000.00 per month from 30/6/16, until vacant possession is delivered to the plaintiff.

3. 10% post-judgment interest from date of judgment until its liquidation.

4. An order directing Defendant to immediately restore the demised premises to a tenantable condition.
5. Cost of the as assessed by the Court.

The Defendant was served with the Originating Process via substituted means since personal service was impossible. Hearing notices were served via substituted means as per the substituting order of Court made on the 3/2/2020. The Defendant did not file any statement of defence or counter-claim he has no Counsel representation throughout the Hearing.

On the 22/9/2020 the Plaintiff testified in person and Court adjourned for Defendant to cross-examine him but Defendant never showed up. The Court foreclosed the Defendant from opening or closing his case after the Court had foreclosed him from cross-examining the Plaintiff since there was no statement of defence filed in defence of the case. Matter was adjourned to final Address adoption.

The Plaintiff Counsel had waited for Defendant to file and serve him his final address but all was to no avail.

In the Written Address the Plaintiff raised an issue for determination which is:

“Whether from the pleading and evidence adduced in this case the Plaintiff is entitled to the relief sought.”

He submitted that it is trite that where only the Plaintiff had adduced evidence in support of his case the decision to be delivered will be minimal proof. That the Defendant has failed to provide any evidence to enable the imaginary scale of justice tilt to his favour. That the

decision of the Court should be to deliver decision on a minimal proof of evidence having regard to the fact that there is more rebuttal of any of the evidence adduced by the Plaintiff. That the Defendant is therefore deemed to have concede to all the assertions made by the Plaintiff through the testimony of PW1 and the documents tendered as Exhibits. He cited part of the Tenancy Agreement Exhibit A.

That the tenancy was for 2 years from 1/7/14 to 30/6/16. That continued occupation and usage of the demised premises by the Defendant makes the Defendant a tenant at will since Defendant failed to invokethe agreement or renewal of the tenancy if he desired to do so. The Plaintiff relied on the case of:

ODUTOLA & ORS Vs PAPER SACK NIG. LTD (2006)
LPELR -2259 (SC)

That since the Defendant is now a tenant at will that the Plaintiff need to serve Defendant Notice of Intention to Recover Possession. That means that Plaintiff need not serve the Defendant Notice to quit. He relied on the case of:

AJAYI Vs HARRY (2014) LPELR-2427(CA)

JOSEF Vs ADOLE (2010) LPELR- 4367(CA)

That he discharged the burden of proof by serving Exhibit 3 on the Defendant but defendant failed to appear in Court which means he never intended to contest this matter. He urged Court to so hold and grant the relief sought.

On the monetary claims the Plaintiff submitted that Defendant is under obligation to pay all the arrears of rent from 30/6/16 when the tenancy agreement expired till 30/8/19 when Plaintiff commenced attempt to recover possession of the Res from the Defendant. He relied on the case of:

OTERI HOLDING LTD Vs HERITAGE BANK CO.LTD
(2020) LPELR-50802 (CA)

That the evidence of the Plaintiff is and remains uncontroverted as it shows that the Defendant is still in possession of the demised premises. He therefore has to pay for the use of the house in line with the tenancy agreement between the parties. He urge Court to grant all the monetary reliefs before the Court as well as post-judgment interest in line with the rules of Court.

That it is the norm in tenancy cases that in Tenancy Agreement parties agree thatwould keep the demise premises in good repair and condition and return same to its initial state at the expiration of the terms hereby granted. That PW1 testified in the Examination in Chief at paragraph 7 of the Witness Statement on Oath. That the evidence before the Court shows that the house is in bad state of repair and that the Defendant is under an obligation to repair and restore the demised premises to a tenantable condition. He refers to the case of:

R.C.C Vs ROCKONOH (2005) LPELR-2947 (SC)

That the parties are bound by the terms of the agreement. He urged Court to grant all his reliefs since the evidence before the Court is unchallenged and uncontroverted.

COURT

In this case the Plaintiff had alleged that Defendant failed refused and ignored to renewed his rent of the Plaintiff's 4 Bedroom Duplex and 3 Bedroom flat situate at No. 3 Udo Udoma Street Asokoro District Abuja. The Defendant leased same for a fixed term of 2 years from 1/7/14 to 30/6/16.

That Defendant paid N18 Million for the 2 years fixed term. The Defendant also agreed in the Tenancy Agreement to peacefully yield possession of the Res to Landlord with all the appurtenances in good and tenantable condition at the expiration of Tenancy.

That the Tenancy Agreement contains a clause for renewal of the tenancy in that the Landlord may upon a written request made by the tenant 3 months before expiration of the term create another tenancy for the demise premises for a further term of one or two years at a mutually agreed rent by the parties. That at the end of the tenancy the Defendant did not apply for renewal and he refused to deliver vacant possession of the premises. He locked the house and left with the keys the PW1 testified that all attempts made to reach the Defendant were ignored him.

The Plaintiff decided to recover the premises since he wants to put it to personal use. He served the Defendant the requisite notices by pasting since the Defendant locked the house and disappeared. He tendered all these documents (notices) before this Court. He also tendered the tenancy agreement. The Defendant was served with

all the processes and accompanying documents but he did not respond or challenge the case of the Plaintiff. Hence the case stands unchallenged and uncontroverted. The Court ensured that he was given all the leverages and opportunities to defend this case but he failed to do so.

This Judgment is therefore based on the evidence of the Plaintiff and the documents he presented in support of his case.

It is the law that uncontroverted facts are deemed admitted by the person who ought to controvert or challenge those facts. This is more so where such person was giving all the leverages to do so but failed, refused and ignored to do so. It is the law and had been held in plethora of cases that where the case of the Plaintiff is unchallenged as in the present case the Court shall hold it as unchallenged and enter Judgment accordingly.

But before the Court does that it must first place the documents in support on the ever imaginary judicial scale to weigh them in order to know if those documents actually support the case of the Plaintiff and has such weight that the scale will tilt to the side of the Plaintiff. Once that is the case the Court must hold that plaintiff had established its case and naturally enter Judgment in the Plaintiff's favour and grant his reliefs as appropriate.

In every contract parties are bound by the contract they have entered into.-Pacta sunt servanda. That is also applicable in Tenancy Agreement parties are bound to fulfil the terms and conditions set out in a contract of Tenancy.

It is the law that once a Tenant fails to renew his tenancy and had stayed beyond the duration of such Tenancy, he is held to be a tenant at will. That is so where the parties have spelt out in the Tenancy Agreement that the Tenant is at liberty to indicate intent to renew the tenancy.

According to Black Law's Dictionary A tenant at will means:-

“A tenancy in which the tenant holds possession with the Landlord's consent but without fixed term as for duration or rent. It is terminable at the will of either the transferor or transferee it has no designated period of duration. Such tenancy can be terminated by either party upon fair notice.”

So tenant at will is a tenant that overstayed its previous tenancy with the Landlord's consent without a fixed duration. Such tenant can be notified of the landlord's intention to recover premises at any time. The tenant can be referred to as “any time tenant since the tenancy has no duration and can be terminated any time with mere notification by either the landlord or the tenant. See the case of:

ODUTOLA Vs PAPERSACK NIG. LTD (2006) LPELR-2259 (SC)

Going by the fact that defendant stayed over in the Res in this case he became a tenant at will since he did not give up possession at the end of tenancy which expired on 30/6/16 going by the Tenancy Agreement tendered in this case by the Plaintiff which was marked as Exhibit 1. Since in the holding over there was no specific duration and fixed rent there is a Tenancy at will. From all

indications the holding over is with the consent of the Plaintiff. That also made the holding over a tenancy at will since the Defendant did not renew the expired Tenancy and never indicated that he will intends to renew same. So this Court holds.

It has been held in so many case that where it is obvious that there is a tenancy at will as in this case, the landlord or tenant can at any time terminate the said tenancy by mere notification. So the landlord on Tenancy at will can recover possession from a tenant at will by serving him Notice of Owners Intention to Recover Possession. There will be no need to serve such Tenant a Notice to Quit.

In this case the Plaintiff served the defendant the notice of landlord's intention to recover premises. The Plaintiff tendered the notice of his intention to recover premises. He tendered that document before this Court. He also tendered the pictures of the Court Bailiff pasting the served notices on the gate of the Res which was locked up by the Defendant. Those documents were admitted and marked as Exhibits 3 & 4.

Meanwhile the Plaintiff had in a Power of Attorney made on the 20/6/19 donated to Akinyemi Aremu issue to the tenant Defendant any or all notices as may be required in respect of the demised property which is the Res in this case. The Plaintiff/Donor also by the Power of Attorney asked the Donee to institute an action when necessary to recover the demise property from Hidtma Jagris and to take all steps incidental to discharge and exercise of the powers conferred on the donee of the said Power of Attorney. That document was tendered before

the Court and admitted as Exhibit 2. The said Exhibit 2 legitimized the actions of the said Akinyemi Aremu is by the said power of Attorney the action of the Plaintiff PW1 in this case. The Affidavit of service of the process and all hearing notices were all attached indicating that personal services And that the notices to quit and Notice to recover possession were all pasted as ordered by the Court as the case may be. Copy of the Notice to recover possession was equally attached tendered and admitted as Exhibit 3.

The Plaintiff also tendered a letter to Defendant dated 30/6/19 requesting the Defendant to vacate the Res. In the letter the Plaintiff requested that the Defendant should restore the Building to a tenantable condition and demanded for payment of the rents was overdue. That document was attached as Exhibit 5.

The Notice to recover possession which the Plaintiff tendered is the right step in this case since the Defendant became a tenant at will. Even the Notice to quit was surplusage. But it is imperative to state that the tenancy ab initio was for a fixed term of 2 years from 1/7/14 to 30/6/16. So the Notice to Quit is proper in that regard. That is inwith the decision of Court in the case of:

HITDA JOSEF Vs CHIEF A.S.ADOLE (2010) LPELR-4367(CA)

The services of this Notices are proper and in line with the extent provisions of the Court and the decision of the Court. See the case of:

NWEKE Vs IBEH (1974) 4 ECSR 54

ONWUGHAUBA Vs OPARA OKO & ORS (1999) 14 NWLR (PT.637) 95@ 197.

ODUTOLA Vs PAPER SACK SUPRA.

Once a tenants holds over possession of demised premises the landlord is entitled to mesne profit for the period of holding over. Such profit starts counting after the date of the expiration of the tenancy and from the date of the overstay until the date of giving up possession. In that case the rent due up to that date are called arrears while the amount due after that date is called mesne profit. Such holding over can be termed a.....of trespass on the Res.

Where there is claim of arrears of rent the landlord is not challenging the validity of the continued occupation. In this case the land lord is not challenging the continued occupation between 30/6/16 to 30/8/19. He is only claiming arrears of rent for the period which is N28.5 Million. He is however claiming mesne profit from the said 30/6/16 till vacant possession is delivered in the alternative.

The mesne profit is N750,000.00m per month from the said 30/6/16 till vacant possession is delivered to him. He had established before this Court that Defendant is liable to pay and he, Plaintiff is entitled to be paid the arrears of rent due for the period when the Plaintiff commenced attempts to recover possession of the demised property from the Defendant. That is the proper thing to do and it is in line with the decision of the Court in the case of:

OTERI HOLDINGS Vs HERITAGE BANK (2020) LPELR-50802 (CA)

The Plaintiff in his testimony established that he is entitled to be in Arrears of Rent and mesne profit. If the Defendant fails to pay the said arrears then the mesne profit applies. The Court had settled the issue in the case of:

OTERI HOLDING Vs HERITAGE BANK SUPRA.

As earlier stated the parties to any contract are bound by the terms and condition set out in such contract. That is captured in the latin maxim Pacta Sunt servanda

In the tenancy agreement Exhibit 1 the parties agreed that upon vacation or giving up possession the Tenant agreed to put the premises in tenantable condition.

In the said Tenancy Agreement the Tenant Covenant in paragraph 4 of the Tenancy covenant agreed and covenant.

“To keep the demised property in good repairs and condition and return same to its initial state at expiration of the term hereby granted”.

The above has no ambiguity. In this case the Plaintiff demands that the Court to order that Tenant/Defendant should put the premises in tenantable condition. It is the law that in all tenancy Agreement the tenant covenants to put the Res in tenantable condition. It is a mandatory proviso/clause in all tenancy agreement. In that case the Tenant has the obligation to repair and restore the premises to a tenantable condition. That is the decision in the case of:

R.C.C Vs ROCKOMOH (2005) LPELR-2947 (SC)

In all cases the Defendant is expected to keep the premises and deliver same in a state of repair proper for such premises. In this case the Defendant is bound by that term of agreement in Exhibit 1 to put the premises in this case in tenable condition and proper repair. So this Court holds because parties are bound by the contract they entered into.

From the totality of the evidence of the Plaintiff in this case it is obvious that the Plaintiff had established his case notwithstanding that the case was not challenged by Defendant, he was able to present his testimony eloquently and backed them up with six credible documents. The case of the Plaintiff is obviously meritorious he is entitled to all the reliefs as sought. This Court enters Judgment in his favour and orders as follows:

That the Defendant Hadtma Jagis vacates the said premises as the Court has ordered immediate possession of all the said 4 Bedroom Duplex and 3 Bedroom Flats situate at the Res No. 3 Udu Udoma street Asokoro Abuja FCT.

Payment of mesne profit at the rate of N750,000.00 per month from 30/6/16 till vacant possession is delivered to the landlord/Plaintiff.

3% post-Judgment interest on the Judgment sum from date of Judgment until final liquidation.

The Defendant shall immediately restore the premises to a tenantable condition before handing same over to the Plaintiff.

Defendant to pay N100,000.00 as cost of this suit.

This is the Judgment of this Court delivered today theday of2021 by me.

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K.N.OGBONNAYA

HON. JUDGE