

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,  
IN THE ABUJA JUDICIAL DIVISION,  
HOLDEN AT COURT NO. 7, APO, ABUJA  
BEFORE HIS LORDSHIP: HON. JUSTICE O.A. MUSA**

**SUIT NO. CV/624/2018**

**BETWEEN:**

BEIJ PROPERTIES DEVELOPMENT LIMITED --- PLAINTIFF

**AND**

1. SHYNTRU INTEGRATED NIGERIA LIMITED

2. MR. FESTUS UCHENNA --- DEFENDANTS

**JUDGMENT**

**DELIVERED ON THE 2<sup>ND</sup> NOVEMBER, 2021**

The Plaintiff instituted this suit against the Defendants claiming as follows:

- (a) AN ORDER of the Court declaring that the plaintiff is entitled to the recovery of its five (5) bedroom duplex with all the appurtenances situate at No. 3 Lake Alau Close, Maitama Abuja.
- (b) AN ORDER of Court ejecting the defendants and any other person forthwith from the five (5) bedroom duplex and its appurtenances at No. 3 Lake Alau Close, Maitama Abuja.
- (c) AN ORDER of Court Mandating the defendant to pay to the plaintiff, the sum of One Million (N1, 000,000.00) Naira only, being the balance or arrears of rent due for the period of 15th January 2017 to 15th January 2018.
- (d) AN ORDER of Court mandating the defendant to pay the plaintiff, mesne Profit from 15<sup>th</sup> January, 2018 at the rate of Five Hundred Thousand (N500,000.00) naira per month or Sixteen Thousand,

Six Hundred and Sixty Six Naira and Sixty Seven Kobo (N16,666.67) per day as rent till the defendants vacate the said premises and deliver up same to the plaintiff or its agent.

- (e) AN ORDER of Court mandating the defendants to carry out their terminal obligations by putting the premises and its appurtenances in a tenantable condition and in the state it was before it was rented to the defendants or in lieu, pay the sum of Five Hundred Thousand (N500,000.00) naira to the plaintiff.
- (f) AN ORDER of Court, mandating the defendants to pay to the plaintiff, ten (10%) percent interest on the judgment sum per annum, from the date of judgment till the total sum is paid.
- (g) AN ORDER of court mandating the Defendants to pay to the Plaintiff the sum of Three Hundred Thousand (N300,000.00) naira only as general damages and cost of the suit.
- (h) AND FOR SUCH FURTHER OR OTHER ORDER(S) this Honourable court may deem fit to make in the circumstances.

The Defendants were served with the processes in this suit on 30<sup>th</sup> April, 2019 the Defendants filed a Preliminary Objection to the Plaintiff's suit. The Plaintiff was served and accordingly filed a reply to the Preliminary Objection on 25<sup>th</sup> June, 2019. However when the case came up on 28<sup>th</sup> January, 2020 neither the Defendants nor their counsel were in court and upon an application by Plaintiff counsel the Preliminary Objection of the Defendants was struck out.

Beyond the filing of Preliminary Objection aforesaid, the Defendants did not file any defence to the Plaintiff's case. In essence this suit was prosecuted without the Defendants filing a defence or defending the suit. The Plaintiff in prove of its suit called one witness and tendered

seven (7) exhibits and close its case. The witness was never cross examined nor his evidence challenged or discredited. At the end of the trial the Plaintiff filed a written address and raised two issues for determination.

I have carefully read all the processes filed on this suit, I have listened attentively to the PW1 give his evidence. I have equally read the exhibits tendered in this suit, this suit essentially is for the recovery of premises and the basic issue for determination is whether the Plaintiff has prove its case against the Defendants. As I said earlier, the Defendants did not participate in this suit despite been served with the processes filed by the Plaintiff. In such a case the quantum of prove or the burden of proof on the Plaintiff is minimal and is discharge on the preponderance of evidence. See the case of Okpoko Community Bank Ltd Vs. Igwe (2013) 15 NWLR (Pt 1376) 167 at 183 to 184 paras G-C.

The case of the Plaintiff is that the Defendants are its tenants at No. 3, Lake Alua Close, Maitama Abuja. The tenancy is a yearly tenancy, the Defendants paid the sum of ₦15,000,000.00k as rent for one and half year, the rent ran from 15<sup>th</sup> July, 2014 to 14<sup>th</sup> January, 2016 a period of one and half year. Upon payment, the Plaintiff enters into a tenancy agreement with the Defendants. The Defendants also pay a sum of ₦1,500,000.00k as agency and legal fees and was also issued a receipt. The tenancy was renewed by the Defendants for another period up to 14<sup>th</sup> January, 2018 and was issued receipt for those payments. For that period that Defendants were owing N1,000,000.00k as arrears of rent, at the expiration of the rent ending 14<sup>th</sup> January, 2018 the Defendants failed, neglected and refused to pay their rent or renew their tenancy despite several demands to do so from the Plaintiff.

The Plaintiff cause a notice to quit to be issued against the Defendants on 22<sup>nd</sup> December, 2017 at the expiration of the said notice, the Plaintiff issued a notice of owners intention to recover possession against the Defendants. But despite this the Defendants did not vacate the premises and still detained same. The above is the character of the evidence induced by PW1, he also tendered several documents including a notice to quit dated 22<sup>nd</sup> December, 2017, the rent receipts dated 19<sup>th</sup> July, 2018, another rent receipt dated 10<sup>th</sup> July, 2014, the tenancy agreement undated and a DHL express shipment docket.

From the evidence adduce, as at the time the writ of summons was taken out in December, 2018 the Defendants have been in arrears of rent for a period of over eleven (11) months. The law is trite that once a tenant is in arrears of rent his tenancy is automatically terminated or determined by effluxion of time and he thus become a tenant at will see the case of *Odutola Vs. Papersack Nigeria Ltd* (2004) 13 NWLR (Pt 891) 509.

In that case the tenant is no more entitle to serve a notice to quit once the tenancy has been determined by effluxion of time, a notice to quit become irrelevant. Thus from the day the tenancy expires by effluxion of time, the landlord is not under any obligation whatsoever to issue the tenant a notice to quit. The landlord is only required to serve statutory 7 days notice of his intention to recover possession on the tenant see the case of *splinters (Nig) ltd v Oasis finance ltd* (2013) 18 NWLR (pt 1385) 188 at 220. In essence the burden on the landlord where the tenant is in arrears of rent and holding over is serve the tenant a 7 days notice of owners intention to recover possession. He need not serve any notice to quit on the tenant. Now the service of a notice of owners intention to

recover possession on the tenant is mandatory as failure to do so will be fatal to the landlord's case. The law trite that where service of a process is required and a prescription of law failure to serve such notice is a fundamental vice which touches on the jurisdiction of court to entertain the case. In the instant case, the plaintiff serve the defendants a notice to quit which is dated 22/12/2017.

As at the time the defendants where in arrears of rent. This notice to the best of my understanding is superfluous. However upon being serve the said notice, it will seems that the defendants paid the arrears of rent in the sum of #5,000,000.00 leaving a balance of #1,000,000.00 this can be gleaned from the receipt dated 19/1/2018. That was the last rent on record paid by the Defendants to the Plaintiff, thereafter the Defendants fell in arrears of rent again until this suit was filed.

The PW 1 gave evidence that the owners Defendants were served a notice of intention to apply to recover possession. The said notion was tendered in evidence as exhibit, I have carefully read the notice, exhibit and I have not seen any evidence of the said notice having been served on the Defendants, I have also gone through the evidence of the PW1 concerning the service of the said notice of owners intention to recover possession and there is no piece of evidence adduce by the said PW1 showing that the Plaintiff served the Defendants with the notice of owner's intention to recover possession from the Defendants. All the PW1 said concerning any notice related to the quit notice served on the 24<sup>th</sup> December, 2017. For the avoidance of doubt I shall reproduce verbatim the relevant portion of the PW1 evidence.

"Q After the expiration of the first payment what happened.

A He failed to pay the second period and we wrote him a quit notice but eventually he paid for 15<sup>th</sup> January, 2016 to 14<sup>th</sup> January, 2017. Thereafter he started having issue lack of payment again.

We then briefed our lawyer who served him with a quit notice on 24<sup>th</sup> December, 2017 through DHL because he could not be seen. In respect to that notice he ran to pay N5million covering 14<sup>th</sup> January, 2017 to 14<sup>th</sup> January, 2018 which was the last payment he made till date.

When he came to beg, my boss gave him a waiver of N2million he now paid N6million only. Since he could not pay that is why we are in court.

Q What do you want the court to do for you?

A I want the court to grant all our payers as stated on the face of the writ.”

The court have severally warned litigants to stop dumping documents on the bust without giving evidence linking such document. In the instant case, all the witness did was tender in evidence a bunch of document without giving evidence linking these documents to the Plaintiff case. As I said earlier the failure of the Plaintiff to proffer any evidence showing that the Defendants were actually served with the notice of owners intention to recover possession is fatal to the Plaintiff case as this as pulled the rug of Jurisdiction from under the court. Where a court lacks the Jurisdiction to try a matter, any decision reached by the court in the matter is a nullity.

I hold that the Plaintiff did not discharge the onus of proof placed on it by law. And since this bust lacks the Jurisdiction to entertain the

Plaintiff's case, I shall strike out the matter and the Plaintiff's case hereby struck out. This is the Judgment of the court.

**APPEARANCE**

J. O. Okete Esq. for the Plaintiff who is represented by Ochai.

The Defendant not in court.

Sign

Hon. Judge

02/11/2021