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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY THE 21ST DAY OF JANUARY, 2022

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

JUDGE

SUIT NO.: FCT/HC/CV/326/20

BETWEEN:

GREEHAVEN ETATES LIMITED --------- } CLAIMANT

AND

SOMADINA OMENKA --------- } DEFENDANT

JUDGMENT

On the 12th day of November, 2020 the Plaintiff Greenhaven Estates Limited instituted this action against the Defendant, Mr. Somadina Omenka seeking for a Declaration that the Defendant breached the Terms of Tenancy Agreement entered between him and the Plaintiff and became a Tenant at-will. The said Tenancy have been determined by effluxion of time. That Defendant wilfully refused to pay the Five Million Naira (₦5, 000,000.00) Rent and despite the statutory notification, refused to deliver up the premises.

The Plaintiff want a Declaration that it has a right to take over possession of the Res – Flat 3 Plot 607 Wuye District, Abuja.

The Claimant wants an Order directing the Defendant to remove his belongings from the Res and deliver up possession to it.

That the Defendant should pay up the outstanding rent already accrued until the dull and final possession by Plaintiff.

Cost of Two Million Naira (₦2, 000,000.00) for the Suit.

10% interest from Judgment till full liquidation of the Judgment.

The Plaintiff called a Witness – PW1 who testified and tendered five (5) documents in support of its claim. He was Cross-examined by the Defendant Counsel. The Defendant filed Statement of Defence but did not call any Witness and rested his Defence on the case of the Plaintiff. The parties filed their respective Final Addresses.

In the Plaintiff's Final Address it raised a sole Issue for determination which is:

> **"Whether it has proved its case by Preponderance of Evidence."**

It answered the question in the affirmation and submitted that that the Tenancy came to an end by effluxion of time on the 29th April, 2020 and the Defendant neglected to pay the said rent for the period of 30th April, 2020 to 29th April, 2020. But that Defendant continued to stay in the premises hence making him a Tenant at sufferance. He cited the case of:

Chiadi V. Aggo

(2018) 2 NWLR (PT. 175 @ 183

He urged the Court to so hold.

That the landlord is entitled to recover the Res from the Defendant following due procedure permitted by law having issued the requisite Statutory Notices of Six (6) months and Seven (7) days respectively. He referred to the case of:

Amah V. Ozouli
(2011) 5 NWLR (PT. 331 @ 335

That the Plaintiff had through its PW1 laid evidence before this Court showing how the Plaintiff required Notices to the Defendant and tendered the said Notices which were admitted as **EXH 4 & 5** respectively. That by so doing the Plaintiff had met the requirement and is entitled to recover the premises from the Defendant. It referred to the case of:

D.M.V Nigeria Limited V. NPA
(2019) 1 NWLR (PT. 163 @ 167

That the denial of the Defendant that he was served the Notices is misconceived as he personally acknowledged receipt of the Notices by signing his signature on the acknowledgment copies of the said Notices and the proof of service as shown in **EXH 4 & 5.** That these documents were admitted without any objection by the Defence.

That the PW1 under the fine of Cross-examination also reiterated that the Defendant was personally served as required by law. Hence the service was sufficient as required by law. He urged Court to so hold.

That by the said valid service of the Statutory Notices the Tenancy has automatically been determined at the expiration of the Notices. He placed credence in the case of:

Cobra Ltd. & Or V. Omole Estate and Investment Ltd. (2000) LPELR – 6809 (CA)

That the Defendant failed to give up the possession of the premises and thus deprived the Plaintiff the right and benefits accruing from same.

That the action of the Defendant is a ploy to deny the Plaintiff his due benefits. He urged the Court to so hold. He urged the Court to resolve the issue in the Plaintiff's favour and hold that the Tenancy has been determined by effluxion of time and that the refusal of the Defendant to pay the outstanding rent of Five Million Naira (₦5, 000,000.00) amounts to a breach of the Tenancy Agreement.

That the Defendant abandoned his averment as he failed to lead evidence in defence of the case hence admitting the claim of the Plaintiff. He referred and relied on the case of:

Nigeria Breweries PLC V. Ikyarkyase & Or (2015) LPELR - 40409 (CA)

That the Defendant has no Defence to the claim of the Plaintiff. It urged Court to grant all its Reliefs as sought.

The Defendant filed its Final Address. According to him, he admitted owing the Plaintiff for the said Rent. He claimed that the Plaintiff never served him the Statutory

Notices. But could not deny that his signature on the said Notices acknowledging receipt of the Notices as he did not call any evidence in the Defence of the Suit though he filed a Statement on Oath deposed to by him in person but did not testify in Court and the reason best known to him alone. At the close of the Plaintiff's case the Defendant rested its case on that of the Plaintiff.

In his Final Address he raised an Issue for determination. That the PW1 – Sahilu Omeiza did not serve the Statutory Notices on the Defendant as such. That his testimony on that should not stand as the only person who can testify of the service in the person who served the said Notices. Again that he is not the maker of the five (5) documents he tendered. That the evidence of the Claimant's Witness is inadmissible for being hearsay. That from the answer elicited from the PW1, the Defendant had no need to call any Witness as PW1 answer is sufficient to defend the Suit.

In the said Final Address he raised an Issue for determination which is:

> **"Whether from facts and evidence before the Court, Claimant has proved his case to be entitled to the Judgment of the Court in its favour."**

In summary, the Defendant submitted that the Plaintiff has not proved its case to merit the Judgment of the Court to be entered in its favour because the Claimant's Witness is not the maker of the documents. He knows

nothing about the service of the Notices. His evidence is based on hearsay.

The Tenancy for 30th April, 2018 to 29th April, 2020 was not tendered before the Court. All Exhibits tendered by the Plaintiff are Documentary Hearsay. He contended that the service of Notices is not personal. He referred and relied on the following cases:

Abalaka V. Ministry of Health
(2006) 2 NWLR (PT. 963) 105 @ 129

UTB Nigeria V. Ozoemena
(2007) 3 NWLR (PT. 1022) 448

That Court should confine itself with evidence before it. That this Court cannot act on EXH tendered by the PW1.

That PW1 said he does not know who served the Defendant but only knew he was served through the Chambers of the Plaintiff Counsel. He urged Court to discontinuance the Plaintiff's submission on personal service of the Notices on the Defendant.

That though the PW1 claimed that the signature in the Notices were that of the Defendant, that there are disparities in the signature in **EXH 4 & 5** and evidence in **EXH 1** which is the Tenancy Agreement. That the evidence of the PW1 in that regard should be discontinuance and the Exhibit and the Exhibits, rejected. He referred to the case of:

Andrew V. INEC
(2018) 9 NWLR (PT. 1625) 507 @ 565

That the address of Counsel cannot take the place of evidence.

On the PW1 submission that the signatures on the Notices are proof that the Defendant was personally served, he submitted that it is only the person who served such Notices that can lead evidence in that regard. That there are several different signatures on the documents tendered by PW1 all purported to be that of the Defendant. He referred to the case of:

Udoh V. State
(1994) 2 NWLR (PT. 329) 672 per Tobi JCA of the blessed memory as he then was.

On the documents **EXH 1 – 5** tendered by the PW1, Defendant submitted that they are all Documentary Hearsay and are therefore inadmissible. That PW1 said that he did not sign the documents. That PW1 is not the maker and not competent to lead evidence on that. He referred to the cases of:

Ladoja V. Ajimobi
(2016) 10 NWLR (PT. 1519) 87 @ 148 – per Ogunbiyi JSC

Victor Okezie Ikpeazu V. Alex Otti & Ors
(2016) LPELR – 40055

That Plaintiff failed to call the makers of the documents to tender same. That the said Exhibits should be expunged from the Court's Records. That if that is done it will be obvious that there is no evidence to sustain the case of the Plaintiff and as such it will fail. He urged Court to so hold.

That the Defendant led evidence through Cross-examination contrary to the submission of the Plaintiff in **paragraph 2.16 of Plaintiff's Final Address.** He submitted that the evidence elicited by the Defendant Counsel from Cross-examination of the PW1 constitutes evidence of the Defendant in this case.

That the case of the Plaintiff is very weak and was discredited at Cross-examination. That Defendant not leading evidence does not means that Judgment should automatically be entered in favour of the Plaintiff. He urged Court to hold that Plaintiff's case was discredited and the Court cannot give Judgment in its favour.

That the Plaintiff failed to tender the Tenancy Agreement of 2018 – 2020 that is between 30th April, 2018 to 29th April, 2020. He urged Court to hold that there is no Tenancy Agreement between the parties and as such dismiss the Suit of the Plaintiff.

Upon receipt of the Defendant's Final Address the Plaintiff Counsel filed a Reply on Points of Law.

On the Defendant's submission on failure of Plaintiff to serve Statutory Notices, The Plaintiff Counsel referred and quoted extensively from the recent Supreme Case and submitted that defiant tenants are no longer allowed to rely on the irregularity of service of Statutory Notices to Quit to continue the unjust act of denying the landlord the rights accrued to him from the Tenancy particularly where such tenants had held over the property in breach of the Tenancy Agreement. That is the decision of the Supreme Court in the case of:

Pillars Nigeria Limited V. Desbordes
(2021) 12 NWLR (PT. 1789) 122 @ 124

That based on the decision of the Apex Court cited above that the Writ of Summons served on the Defendant on 12th November, 2020 for the Recovery of Possession serves as sufficient Notice on the Defendant to yield possession. He urged Court to so hold. That the Statutory Notices required to be served on the Defendant by May 2021 before an Order to Recover Possession/Premises can be granted, would have been duly served by the service of the said Writ on the Defendant. He urged Court to so hold.

On the submission of **EXH 1 – 5** as Documentary Hearsay having not been signed by the Plaintiff's Witness – PW1, the Plaintiff Counsel submitted that it is not the position of the law. That a juristic person as the Plaintiff can act through its agents/servants. That PW1 is an agent of the Plaintiff and acted on its behalf. That it is immaterial that he is not the one that signed or served or made the documents tendered in evidence as Exhibits. Therefore his evidence cannot be considered as Documentary Hearsay, as the evidence of agent of a juristic person is admissible and relevant. He relied on the case of:

Sajeh V. BON Limited
(2006) 6 NWLR (PT. 976) 319

That the PW1 as agent of Plaintiff who tendered the said EXH 1 – 5 cannot therefore be a Documentary Hearsay. He urged Court to discontinuance Defendant's

submission and admit the said Exhibit and testimony of the PW1. Besides that the Defendant Counsel never objected to the admissibility of the said Exhibits. That he never stated that he will raise his objection in his Final Address. He referred to the case of:

Osho & Anor V. APC
(1998) LPELR – 2800 (SC)

Rite Time Aviation & Travel Services Limited & Anor V. Spring Bank
(2018) LPELR – 46992 (CA)

That the Defendant Counsel cannot at this point complain about the already admitted documents in this Suit. He referred to the case of:

Yahaya V. Umar
(2020) LPELR – 50822 (CA)

That Defendant Counsel was in Court on 10th March, 2021 when the documents were tendered in evidence by PW1 but he offered no objection.

That the Defendant Counsel has waived its right to raise the issue now. That the address of the Defendant Counsel in that regard cannot take the place of evidence of the Defendant. He referred to the case of:

Ucha & Anor V. Elechi & Ors
(2012) LPELR – 7823 (SC)

That all the documents tendered are relevant to the issue in dispute and that relevancy governs admissibility. He referred to the case of:

That all the documents tendered are relevant and form basis of the Plaintiff's case against the Defendant. That the objection by the Defendant through his Counsel are ill-conceived and should therefore be discontinuanced.

On the submission by Defendant Counsel that the Tenancy Agreement of 2018 to 2020 was not tendered, he submitted that the Tenancy Agreement of 2016 to 2018 is on renewable basis. That in the Agreement tendered there is an option to Renew Clause which formed the basis of the 2nd Term Agreement. Therefore the Defendant Counsel cannot claim that there was no existing Tenancy Agreement between the parties and the submission should be discontinuanced. That the parties are bound by the Agreement they have entered into. That since the Defendant failed to call evidence to challenge/defend the case against him by any contrary credible or rebuttal evidence, that Court should grant the claims of the Plaintiff and award substantial cost against the Defendant for delaying justice.

COURT:

In this case, having summarized the stance of the parties for and against respectively, can it be said that the Plaintiff has proved and established its claim by preponderance of evidence presented before this Court through the oral evidence of the Plaintiff's sole Witness – PW1 and the five (5) documents tendered in proof of the case? Can it also be said that the same Claimant, from

the evidence adduced, he is entitled to the Reliefs sought and entitled for the Judgment of this Court to be entered in its favour, more so when the Defendant had filed Statement of Defence and Statement on Oath but did not come before this Court to adopt the said Oath as required by law and did not attach any document to challenge the Suit of the Plaintiff especially as regard the signature of the Defendant to prove that the service of the Notices were not personally affected? Again, is there a 2nd Term of Tenancy Agreement between the parties since the Plaintiff did not tender such Agreement and it is really necessary to tender a separate Tenancy Agreement for the 2nd Term of Tenancy from 30th April, 2018 to 29th April, 2020? Was the Statutory Notices properly served as required by law and should any irregularity in the service of the Statutory Notice vitiate or nullify the said Tenancy in that the Court should hold that there was no Tenancy Agreement between the parties and therefore dismiss the Suit, bearing in mind that the same Defendant had made a part payment of Two Hundred Thousand Naira (₦200, 000.00) in the process to defray the Rent for the period of 30th April, 2018 to 29th April, 2020? Were the documents tendered a Documentary Hearsay as the PW1 was not the maker of the documents – **EXH 1 – 5** tendered by him?

Not answering the questions strictly seriatim, it is the humble view of this Court that the Plaintiff had established its case on preponderance of evidence it presented before this Court, through the facts and evidence it adduced from the testimony of its sole Witness and through the documents it tendered through the same Witness which the Defendant and his Counsel

never challenged or objected to throughout the cause of Proceedings. The Plaintiff is therefore without any doubt entitled to the Judgment of this Court as its case is very meritorious having not been challenged per se and since the Defendant as it were did not come forward to adopt its Statement on Oath or call any Witness to do so on its behalf. He never attached any document to prove that he was not served personally or that the alleged personal service by the Plaintiff was not acknowledged by him in person and that the signatures therein are not his signatures.

It is imperative to state that whoever alleges must prove. Defendant alleged that he was not served the Statutory Notices personally but he failed to prove same as required by law.

He did not attach any document to show and prove disparity in the signatures on the documents – Statutory Notices.

There is no doubt a 2nd Term Tenancy Agreement going by the clause in the Agreement of 2016 presented by the Plaintiff in this case. There is no point and no need to have a separate Tenancy Agreement signed by the parties for the Tenancy of 2018 – 2020. The said clause makes for continuity and automatically implied Agreement. It is such that the Terms and Conditions on the Agreement of 2016 -2018 apply. Parties are at all times bound by the agreement they had voluntarily and joyously entered into. That is summed up in the Latin Maxim **"Pacta Sunt Servanda"** which is a common mantra chanted by parties in every contract Agreement.

This Tenancy Agreement is not an exception. The same mantra is applicable in this case. This therefore means that the Plaintiff not tendering an Agreement for the 2018 – 2020 Term in this case is not necessary as the said 2018 – 2020 Term of the Tenancy suffices. So this Court holds.

It is also the humble view of this Court that the Statutory Notices were personally served and there is no irregularity on the service of the said Notices to nullify the Tenancy as the Defendant had alleged. Even where there is an irregularity, (but there is none in this case) given the very recent decision of the Supreme Court in the case of:

Pillars Nigeria Limited V. Desbordes
(2021) NWLR (PT. 1789) 122 @ 124

where the Court of highest Judicial Allotment – the Supreme Court had held that in a matter/action to recover possession that any default or irregularity on improper or irregular service of the Statutory Notice, that service of Writ of Summon on the Defendant stands as due notification to recover premises by landlord. That in that case the Tenant should not waste the time of the landlord but must vacate the premises without any further delay.

In a nutshell, that irregularity in service of Statutory Notices in a Tenancy matter like the present case should not be used as a ground for Defendant to continue possession of the premises based on the technical Rule of Service of the Statutory Notice. The irregularity and/or

the alleged non-personal service of the Statutory Notice on the Defendant should not be used as a ploy by the Defendant to perpetually stay in the demised premises and should not in any way to nullify a validly entered Tenancy Agreement in which the Defendant had made a part payment of Two Hundred Thousand Naira (₦200, 000.00) and where in his own words he had acknowledged the debt and begged for time to pay the balance when his economy improves. See paragraphs 10, 17 & 18 of the Defendant's Statement of Defence and Statement on Oath. So this Court holds.

It is the humble view of this Court that the documents tendered by the PW1 are not documentary hearsay as the Defendant erroneously and misleadingly alleged. Though the PW1 is not the maker of the documents, he as a staff and Attorney of the Plaintiff is in a best position to tender same having had the in-depth knowledge of the issues and being very conversant with the issues in this Tenancy Agreement. Besides, the Plaintiff is a company and as a company it operates through its agents, managers and representatives. The document concerning the Tenancy Agreement need not be tendered only by the person who made the document. As a matter of fact and course, such documents are usually impliedly made by the company and not by the human person who signed and authored them. So the documents tendered by the PW1 though not authored by him are not documentary hearsay. So this Court boldly holds.

Having summarized the view of this Court above, I will now analyse the five (5) documents tendered in support

of the case of the Plaintiff in order to nail home the reasoning of this Court.

There was a validly entered Agreement which the Plaintiff tendered. The said Tenancy Agreement were signed by the parties. As such they are bound by the Terms and Condition therein. Pacta Sunt Servanda.

In the agreement – **EXH 2** the parties agreed thus:

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> **"When a new Term is created and no new Tenancy Agreement is signed by the parties THIS AGREEMENT SHALL OPERATE TO APPLY SUCH NEW TERMS CREATED ..."**

The content of the above is clear. The above implied that the Terms and Condition of the previous Tenancy Agreement continues and it is implied that no new Tenancy Agreement is required to be signed by the parties.

The Defendant is very much aware of this. He paid Two Hundred Thousand as part payment of the rent for the period of 2018 – 2020. He had stated in his Oath and Statement of Defence that the part payment was for the period of 2018 – 2020. He also stated that he will pay for the remaining balance. He also asked the staff of the Plaintiff if they can give him time.

For clarity, truth and justice, he stated thus in paragraph 6 of his Statement of Defence and Statement on Oath:

Paragraph 10 of Statement of Claim is admitted. He is willing and committed to paying his rent immediately his finance improves.

The paragraph 10 of the said Statement of Claim provided thus:

> **"The Claimant has asked the Defendant for the said sum of Five Million Naira (₦5, 000,000.00) severally but the Defendant kept promising to pay (SIC)."**

The above which the Defendant admitted confirmed that the Plaintiff demanded for the payment of the rent contrary to the Defendant's claim that there was no demand orally or in writing. It is equally confirmed that Defendant is aware of the existence of the Tenancy of 2018 – 2020. Meanwhile, the payment of Two Hundred Thousand Naira (N200, 000.00) was made sometime in February 2018 which shows that it was obviously made for the part of the Rent of 2018 -2019. Paragraph 10 confirmed that the Demand was made for the payment of the Rent for the Term 2018 – 2020.

Again, the Claimant showed that Defendant made call to inquire if he can pay the sum of N2.5 Million into the Account of the Plaintiff with Access (Diamond) Bank with a promise to pay the remaining balance of N2.5 before the end of 2019. The Claimant's Secretary agreed but Defendant never lived up to his promise. The Defendant also confirmed that by admitting paragraph 11, 12 & 13 of the Claim of the Plaintiff in paragraph 7 of the Defendant's Statement of Defence.

It is very obvious that the Defendant did not move out of the premises though he denied that in paragraph 8 of his Statement of Defence. If he had moved out there will not be a claim calling on the Court to Order that the Defendant move out of the premises as the Plaintiff had done.

The Plaintiff tendered the two (2) Statutory Notices. Going by the date on them, it is evidently clear that those Notices were served within the appropriate statutory period. The service of the 6 Months Notice was done within the time. Again, there is evidence of receipt of the said 6 Months Notice and the 7 Days Notice too showing that the original was collected by the Tenant – Defendant.

A closer look at the signature signed by the Defendant in the Tenancy Agreement – **EXH 2** and that signature signed by the person who collected the Notices shows that both signatures was signed by one and the same person who no doubt is the Defendant.

The unsubstantiated allegation by the Defendant Counsel that the Defendant was not served personally cannot stand. This is because the Defendant did not present before this Court any document to prove that he did not sign those signatures acknowledging the receipt of the Notices. So the evidence tendered by the PW1 in that regard in **EXH 5 & 5** are duly accepted by this Court. The two (2) documents established that the Defendant was duly served with the said Statutory Notices personally. So this Court holds.

Most importantly, with the advent of the recent Supreme Court decision in the case of:

Pillars (Nigeria) Limited V. Desbordes Supra

the service of the Writ of Summons on the Defendant in this case services as due notification. By that decision, the Supreme Court had laid to eternal rest the evil plan of some Tenants who anchor on faulty or irregular service or claim on non-service of Statutory Notice to perpetuate possession in the Demised property denying the landlord the fruit of its sweat in building the property in issue. That noble decision by the Apex Court had put a stop to such technical nonsense used by unscrupulous Tenants to perpetuate judicial "roguery" in tenancy matters by refusing to give up possession in the name of technicality of irregular and non-personal service of Statutory Notices. The decision of the Supreme Court had laid that to rest with no hope of resurrection.

Again, the Defendant admitting paragraph 19 of the Plaintiff's Claim shows that contrary to his submission in the Final Address he knows that the Rent in issue is for the year 2018 – 2020. Defendant admitting that paragraph 19 shows and confirms that he had accepted his indebtedness to the Plaintiff in that he is yet to pay the said debt of Five Million Naira (₦5, 000,000.00). The Defendant contradicted himself in paragraph 11 of his Oath when he had earlier admitted his indebtedness as shown in paragraphs 6, 7, 10 & 11 of the Statement of Claim.

The Claimant had shown that Defendant refused to give up possession as the Defendant had not yet packed out from the said house even as I deliver this Judgment. Hence the Plaintiff's claim No. (f) & (g).

There is no doubt that Defendant is indebted to Plaintiff in this case. Defendant admitted that. He is aware that the Plaintiff wants to recover possession. He is aware that he had held over after the expiration of the Tenancy and had by that action became Tenant at Sufferance based on the same Terms and Condition. See the case of:

Chiadi V. Aggo
(2018) 2 NWLR 175 @ 183

It is no doubt that Defendant entered the property by virtue of the Tenancy Agreement signed in 2016 – **EXH 2** which was renewable in 2018 – 2020 by virtue of the Renewal Clause.

The Tenancy had expired by effluxion of time and the Defendant held over the property. The Tenancy is at an end but he continued in possession without further grant or agreement with the landlord who has the right of reversion. It is no doubt that the Defendant came into the property lawfully.

Though Defendant no longer has an estate in the property per se but his continued possession on the premises after effluxion of the 2018 – 2020 Tenancy continued on the same Terms and Condition of the original Tenancy – **EXH 2.** That possession will continue until the landlord wrestles it from him as it is doing in this Suit.

The Defendant as Tenant at Sufferance depends on law and not on agreement of the parties. By this action, present Suit, the landlord has the right lawfully to eject the Defendant since the Defendant was duly served with the right Statutory Notices. That is what Plaintiff has done by instituting this action and this Court will not hesitate to grant that Claim since Plaintiff has established his case against the Defendant. It therefore deserves the Judgment of this Court in its favour. So this Court holds. See the case of:

A.P Limited V. Owodumi
(1991) LPELR – 213 (SC)

See also the case of:

Amah V. Ozouh
(2011) 5 NWLR 331 @ 335

The Plaintiff deserves the Judgment of this Court being entered in its favour having followed the due procedure. It served the appropriate Statutory Notices. He filed the present action instead of taking laws into its hand. The Plaintiff had complied with the requirements be serving the Defendant with EXH 4 & 5. He deserves the Judgment of this Court in its favour. See the case of:

DMV V. NPA
(2019) 1 NWLR 163 @ 167

See also the case of:

Splinters (Nigeria) Limited V. Oasis Finance Limited
(2013) 18 NWLR 188 @ 193

There is no doubt that the Defendant had continued to stay in the said premises. Though he claimed that the Plaintiff made his stay-over a living hell, the Defendant could not establish that fact how the Plaintiff made his stay a living hell when he is still in possession of the said premises.

The Plaintiff had established that the Defendant owes him the sum of Five Million Naira (₦5, 000,000.00) and the Defendant had acknowledged that. He also acknowledged that he will pay the said sum. The weak denial in the Statement of Defence on not receiving any written Demand was never substantiated. Besides, Defendant as a Tenant had acknowledged being indebted to a landlord, he need not wait until he is served a Demand Notice before he can pay his Rent and deliver up the possession of the premises. More so, when he was duly served with the Statutory Notices. The Plaintiff tendered the said Notices as **EXH 4 & 5.** The Defendant never objected to the tendering of those Notices. He did not challenge the documents and never informed Court that he reserves his challenge during Final Address. The attempt to deny services of the Notices by the Defendant cannot sell because the same Defendant acknowledged the receipt of the documents in person. Again, he is caught up by the decision in the case of:

Pillars Nigeria Limited V. Desbordes Supra

See also the decision in the case of:

Rite-Time Aviation & Travel Services Limited & Anor V. Spring Bank PLC

(2018) LPELR – 46992 (CA)

Osho & Anor V. Ape
(1998) LPELR – 2800 (SC)

Natsaha V. State Supra

Yahaya V. Umaru
(2020) LPELR – 50822 (CA)

Etim & Anor V. Akpan & Ors
(2019) LPELR – 48681 (CA)

This Court admitted all the documents tendered by the Plaintiff in support of its case. The said documents EXH 1 – 5 are all relevant to the issues in dispute. They are not Documentary Hearsay as the Defendant claims. These documents emanated from the parties and are tendered in support of the Plaintiff's case by the Attorney of the Plaintiff who is very conversant with the issues in dispute and the content of the documents. The documents need not be presented by the makers in person. The Plaintiff on whose behalf they were tendered is a juristic person without flesh and blood. It acts through its Agents, Attorney, Manager, and Staff. The PW1 is the Agent of the Plaintiff and is competent and qualified to tender the documents and testify on behalf of the Plaintiff as he did. His testimony is not a hearsay. The documents are not documentary hearsay either. So this Court holds.

On the above, see the cases of:

Etim Akpan Supra

Fadebi & Anor V. Akintan & Ors

(2017) LPELR – 42129 (CA)

Odu-Alabe V. Ologunebi Supra

Abubakar V. Chuks
(2007) LPELR – 52 (SC)

At this point of evaluating these relevant documents tendered, this Court attach maximum weight to each of the documents so tendered by the Plaintiff in establishing and in proof of its case against the Defendant. The Defendant did not attach any document to challenge these documents. His Counsel did not object to their admissibility. The objection put forward by the Defendant Counsel in his Final Address cannot sell. It is ill-conceived, belated and it is therefore **dicontinuanced and dismissed.**

The so called claim by the Defendant Counsel that it laid evidence through the Cross-examination of the PW1 is laughable. Though it is the right of the Defendant to do so but he never did in this case.

The Defendant Counsel only raised issue of service of Statutory Notices and challenged the signature. But Defendant never presented any document to show that the signatures on the documents – Notices are not his. The said signatures are same with the signature in the Tenancy Agreement. The Defendant did not deny that.

It is imperative to state that the Defendant did not call any Witness or testified in Court or adopted his Statement of Defence and Oath which he filed and served the Plaintiff and the Court. This Court in exercise of its discretionary power to do substantial justice at all times,

in every case, decided to look into and analyse the said Statement of Defence which ordinarily was abandoned by the Defendant. The Court did so in the interest of justice and in the spirit of frontload which has become part of our jurisprudence. See the cases of:

Susainah (Trawling Vessel) & Ors V. Abogun
(2006) 7732 CA

Haruna V. Salua
(1998) 7 NWLR (PT. 559) 653 @ 659

This Court did not automatically enter Judgment for the Plaintiff as sought but decided to look into the Statement of Defence before coming into its final decision. This the Court did in the interest of doing substantial justice.

There is no iota of doubt that Plaintiff has established its case on preponderance of evidence. It therefore deserves the Judgment of this Court being entered in its favour.

This Court grants all the Claims save the cost – paragraph (I) and percentage to be paid – paragraph (J).

The Court will not award cost because of inconsistency in the amount of cost wanted.

A close look at the cost in the claim shows that the Plaintiff wants the sum of Two Million Naira (₦2, 000,000.00) in figure as cost and in words it wants One Million Naira (₦1, 000,000.00) as cost of the Suit. This Court cannot speculate to know the amount the Plaintiff wants as cost. Therefore no cost is awarded. Parties to bear their respective costs.

The Court awards 6.5% interest from date the Judgment is delivered until the said Judgment sum is finally paid up.

This is the Judgment of this Court.

Delivered today the ____ day of _____ 2021 by me.

_____

K.N. OGBONNAYA

HON. JUDGE