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

SUIT NO: CV/3061/2018

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

BETWEEN:

HAJIA HADIZA ABDALLA……CLAIMANT/APPLICANT
AND
ALHAJI HABU FARI……DEFENDANT

JUDGMENT

By the endorsement on the writ with No. FCT/HC/CV/3061/2018, the plaintiff claims as follows:

a. Recovery of possession of premises known as 3-bedroom duplex apartment, (prototype terrace house) servant apartment (BQ) with appurtenances lying and situate at House No. 10, Close A, Federal Ministry of Works and Housing Estate, Jimmy Carter Street, along Winston Churchill Street, off Area 11 junction, by Shehu Shagari Way, Asokoro, Abuja.
b. The sum of N13,500,000 (Thirteen Million, Five Hundred Thousand Naira only) being arrears of rent/or mesne profit from December, 2012 to June, 2018.
c. Mesne profit/or arrears of rent from July, 2018 till vacant possession of the premises.
d. Cost of filing this suit.
e. And for such further or other orders as this Honourable Court may deem fit to make in the circumstances of this suit.

The writ was filed along with the statement of claim, list of documents to be relied upon at the trial, the witness deposition of his witnesses, and attached are the judgment

of this court delivered by His Lordship O.A. Adeniyi and the judgment of the Court of Appeal Abuja Division.

The defendant was represented by a counsel to a certain stage of the proceedings, and by the letter dated the 12th day of November, 2019 the counsel withdrew his services to the defendant in this suit.

Initially, the counsel to the defendant could not deem it appropriate to file the statement of defence of the defendant, rather he filed a notice of preliminary objection which was dealt with in favour of the plaintiff.

Thus, by the statement of claim, the plaintiff averred that she came to know the defendant as a tenant who occupied her house though her estate agent Marble Properties Limited from 2006 when the defendant paid rent of N1,000,000.00 from 18th November, 2006 to 17th November, 2007 in respect of the premises described above, and the defendant resides in the plaintiff's property.

It is averred that the plaintiff took out a writ of summons dated and filed on 4th day of May, 2012 in a suit No. FCT/HC/CV/3209/2012 for recovery of premises and mesne profit in respect of the premises, and the court handed down its judgment on the 3rd July, 2014 striking out the name of the 1st plaintiff for misjoinder and entered judgment partly in favour of the plaintiff, and in that judgment the court held that the plaintiff (in that case) or her solicitor served neither six months or seven (7) days notice on the defendant, before proceeding to serve him with seven (7) days notice of intention to apply to recover possession, contained in exhibit P2.

It went further and held that this procedure is clearly flawed, the implication being that the notice contained in exhibit P2 served on the defendant was irregularly issued, and as such could not validly be relied upon for the

plaintiff's claim for possession of the demised premises in this suit, and the court ordered the defendant to pay to the plaintiff the sum of N4,750,000 (Four Million, Seven Hundred and Fifty Thousand Naira only), being arrears of rent with respect to the premises, which is also the subject matter of this suit, for the unsettled portion of the 2008/2009 tenancy year, and subsequently from November, 2009 to November, 2012.

It is averred that being dissatisfied with the judgment, the defendant appealed to the Court of Appeal, Abuja Division in appeal with No. CA/A/45/2015 and the said appeal was dismissed on the 10th May, 2018.

It is stated that in order to comply with the statutory requirement, the defendant was validly served with a seven days notice to quit by the plaintiff on the 11th day of June, 2018, and at the expiration of the seven days notice to quit, the plaintiff also served the defendant with the seven (7) days owner's/Landlady's intention to apply to recover possession dated the 11th and 12th July, 2018.

That it is averred that by the said judgment the defendant was ordered to pay the plaintiff her arrears of rent to the tune of N4,750,000.00 but the defendant continued to live in the premises from November, 2012 till the date of filing this suit without paying any rent to the plaintiff.

It is averred that the defendant's rent was to the tune of N2,250,000 (Two Million, Two Hundred and Fifty Thousand Naira only) per annum as at November, 2012 as contained in the statement of claim which was relied upon by the previous court, and the defendant refused to pay notwithstanding the demand letter dated 6th June, 2018 was served on him through the bailiff of the court by name Samaila O. Salihu.

The witness statement on oath of the Landlady being the PW1 is a replica of the statement of claim of the plaintiff, and I need not to repeat the summary of it.

The PW2 in his witness statement on oath testified that on the 11th June, 2018, the plaintiff approached him through her counsel to help them obtain form of a statutory notice to quit from the court and which he collected one from the District Court, and the plaintiff signed a copy and arranged for service which he personally attempted to serve the defendant with the quit notice dated 11th June, 2018, and he went to the premises, but did not meet the defendant, and he was informed by one Mr. Joseph security guard in the house in question on the 11th June, 2018 at about 2:00pm that the defendant has not been living in the house since the preceding year but put one of his sons by name Fadalal Habu Fari, and he personally pasted the notice to quit dated the 11th June, 2018 on the front gate of the house, and he snapped a photograph picture of himself while pasting the notice to quit on the main gate, and having done that, he was later requested to paste a written quit notice and a demand letter for the arrears of rent to the defendant and he attempted the service of same.

It is averred that while attempting to paste same, the son of the defendant came out from the house and called a telephone whom he said was the defendant and subsequently collected both the written notice and the demand letter claiming to be acting on behalf of the defendant, and the son endorsed on the duplicate copies of the letters, his name, signature, address and date. That on the 11th July, 2018, he was engaged to serve the defendant with the notice of landlord's intention to apply to recover possession dated 11th June, 2018, and upon pasting of same, he also snapped when he was pasting the notice

of intention to recover on the main gate of the house on the 11th June, 2018, and he prepared an affidavit of service by pasting of both notice to quit and the landlord's intention to apply to recover possession dated the 12th day of June, 2018.

The PW1 adopted her witness statement on oath on the 17th day of October, 2019 and tendered some documents marked as EXH. "A1", "A2" and "A3", however, she was not cross-examined by the counsel to the defendant on the ground that the counsel to the defendant was not paid his professional fee, and until when he is paid, he would not cross-examine the PW1.

The counsel to the defendant appeared on the 13th day of November, 2019 and he begged the court for an adjournment to enable him see his client (the defendant) face to face.

On the next return date, the counsel to the plaintiff informed this court that he was approached by the counsel to the defendant for settlement out of court, and the counsel to the defendant confirmed to this, and the matter was adjourned to another date.

On the following return date, the counsel to the plaintiff told the court that, that day was for adoption of the terms of settlement and that they were yet to conclude settlement, and this was confirmed by the counsel to the defendant, now the matter was further adjourned to another date.

On the next return date, the counsel to the plaintiff informed this court that the parties were unable to settle, and he then intended to put on his second witness. While the counsel to the defendant requested the court to give them another chance of settling the matter amicably, and in which the counsel to the plaintiff conceded but on

condition that, that would be the last chance, and the matter was adjourned to another date for either report of settlement or for continuation of hearing.

On the next return date, the counsel to the plaintiff put in his second witness and PW2 adopted his witness statement on oath and tendered EXH. "A7" and "A5" in evidence, and in another day, the PW2 tendered EXH. "A6" "A7" and "A8".

A date was taken to enable the defendant's counsel to appear for the cross-examination, and the counsel could not appear and after about two adjournments granted at the instance of the counsel to the defendant and the counsel to the plaintiff applied for the defendant to be foreclosed from conducting the cross-examination.

The counsel then filed his final written address, and inspite of the fact that defendant's counsel was served with the final written address of the plaintiff and the hearing notice, the defendant's counsel did not deem it appropriate to take any step in the matter anymore. The counsel to the plaintiff adopted his final written address.

In his final written address, the counsel to the plaintiff raised this issue for determination, to wit:

Whether the claimant has proved her case and is entitled to judgment?

The counsel submitted that from the totality of the evidence addressed by the plaintiff and the failure to lead any evidence on the part of the defendant, the claimant is entitled to judgment in her favour. He then submitted further that the exhibits tendered which were served on the defendant are in compliance with section 8 of the Recovery of Premises Act FCT Laws of the Federation of Nigeria, 2004, and he urged the court to so hold.

The counsel submitted that all the above evidence were neither contradicted, challenged nor controverted by the defendant, and the court ought to accept such evidence on part of the issue before the court in contest, and he cited the cases of **UBN Ltd V. Ohbon (1995) 2 NWLR (pt 380) 647 at 654** and **Folorunso & Anor V. Shaconb (1994) 3 NWLR (pt 333) p. 413 at 433.**

The counsel submitted that the PW1 was not cross-examined when the defendant's counsel were in court, and therefore submitted that where an adverse party fails to cross-examine a witness means an acceptance in its entirety that the evidence of the witness of truth, and he cited the case of **Dagash V. Bulama (2007) 14 NWLR (pt 892) p. 144.** He argued further that where evidence given by a party is not contradicted by any admissible evidence, the court is bound to accept and act on that evidence, that is to say, evidence which is unchallenged through cross-examination not controverted by other evidence and is not by itself incredible is qualified to be accepted and acted upon by the trial court, and he cited the case of **Dr, S.V. Isitor V. Mrs. Margaret Fakaroke (2008) 1 NWLR (pt. 1069) p. 602 at 621.** And he urged the court to answer the sole issue in the affirmative and enter judgment in favour of the plaintiff and to grant all the reliefs sought by the claimant.

It is pertinent to note that the defendant, inspite of being represented by a counsel, did not deem it appropriate to file a statement of defence, which means no issue was joined between the plaintiff and the defendant with respect to this case and the implication of this is that the defendant is deemed to have admitted the claim of the reliefs in the statement of claim. See the case of **Salami V. Muse Family (2020) All FWLR (pt 1030) p. 303 at 315, paras. C-D.** where the Supreme Court held that the absence of a

statement of defence means that no issues were joined in the pleadings. The defendant will be deemed to have admitted the claim to reliefs in the statement of claim except where a paragraph of the said statement of claim contained averments that are notoriously false to the knowledge of the court, in which case, the court is not expected to admit such inadmissible facts. In the instant case, and in line with the decision in the above cited case, let me evaluate the evidence of the PW1 and PW2 to see whether they are credible. See the case of **Ezeani V. F.R.N. (2020) All FWLR (pt 1030) p. 237 at 249, para. A** where the Supreme Court held that evaluation of evidence which is in the province of the trial court is the appraisal of both oral and documentary evidence and ascription of probative value to the evidence resulting in finding of facts.

The PW1 adopted his written statement on oath only as his evidence, and further tendered some documents, however, the counsel to the defendant refused to cross-examine him due to non perfection of his brief by the defendant, and the implication of that is that the adversary accepts the truth of that matter led in evidence. See the case of **Ola V. State (2019) All FWLR (pt 998) p. 326 at 345, paras. A – F.** See also the cases of **Mathew V. State (2019) All FWLR (pt 995) pp. 865 – 866; paras. F-G per Nweze JSC;** and **Isa V. State (2019) All FWLR (pt 980) 535 at 561; paras. B-F per Rhodes – Vivour JSC.** In the instant case, I hold the view that the evidence of the PW1 is so concrete having not been challenged during cross-examination, and is therefore credible. See the case of **Ifediora V. Okafor (2020) All FWLR (pt 1043) p. 485 at 495; para. G** where the Supreme Court held that unchallenged evidence if believed, ought to be acted upon. In the instant case, the defendant did not controvert the evidence of the plaintiff as no contrary

evidence was given. See the case of **Obadina V. Fasoyinro (2019) All FWLR (pt 991) p. 11 at 34; paras. D-E** where the Court of Appeal, Ibadan Division held that where evidence given by one party is left unchallenged and uncontroverted by the other party who had the opportunity to do so, the court is free to act on the unchallenged or uncontroverted evidence before it. In the instant case, the counsel to the defendant has had the opportunity to cross-examine and to debunk the evidence of the plaintiff, but he fail to do so, and to this, I am to make use of the evidence of the plaintiff in arriving at the decision in this case.

The PW2 was not cross-examined by the counsel to the defendant, and I deemed it as unchallenged and uncontroverted, and I have to act upon it, and to this, I so hold that the evidence of the plaintiff is worthy of acceptance, and it is hereby accepted in proof of the claims. See the case of **Okunta V. Odeyh (2015) All FWLR (pt 764) p. 141 at 151; paras. F-G** where the Court of Appeal, Port Harcourt Division held that evidence that is relevant to the matter in controversy and which is neither discredited nor demolished, remains credible evidence and ought to be relied upon by a trial court.

It is in the evidence of the plaintiff that the defendant occupied the property of the plaintiff when he paid the sum of N1,000,000.00 (One Million Naira only) as rent from the 18th November, 2006 to 17th November, 2007, and the plaintiff took out summons against the defendant for the recovery of the premises and mesne profit with respect to the property at the High Court of the FCT, Abuja, and a judgment was entered partly in favour of the plaintiff to the effect that the defendant's tenancy was not validly terminated on the ground that neither six (6) months and seven (7) days notice on the defendant, before the

proceeding to issue seven (7) days notice of notice of owner's intention to apply to the court to recover possession, and the procedure was dearly flawed, and therefore the court then Coram O.A. Adeniyi J. ordered the defendant to pay the sum of N4,750,000.00 (Four Million, Seven Hundred and Fifty Thousand Naira only) being arrears of rent for the unsettled portion of the 2008/2009 to November, 2012. The defendant's rent was to the tune of N2,250,000.00 per annum as at November, 2012 as contained in paragraph 17 of the statement of claim relied upon by Honourable Justice O. A. Adeniyi, and the defendant refused and neglected to pay.

It is also in evidence that (7) days notice to quit and the (7) days notice of owner's intention to apply to the court to recover possession have been served on the defendant.

Now the question for determination is:

Whether the plaintiff has successfully proved the claim with prepondence of evidence to warrant the court to grant the reliefs?

On the relief in paragraph (a) which is the principal relief, the plaintiff relied so much on the judgment of this court Coram O. A. Adeniyi J. delivered on the 3rd day of July, 2014 wherein the court faulted the process embarked upon by the plaintiff (in that case as well as in this case) that the plaintiff did not serve statutory quit notice of six months or seven (7) days notice on the defendant. Now in this instant case it is evident that the plaintiff has served one of the notices, that is the seven (7) days notice to quit, this is with a view to retrace her steps in accordance with the decision on the judgment of the previous case. In that case, the court held that the defendant paid rent to the plaintiff through her agent on an annual basis, for the period between 2006 and 2009, when he paid rent on the

premises; which further confirms that a yearly tenancy existed between the parties at the material period. Therefore being a yearly tenancy, it is determinable by a six months or half yearly notice as prescribed by the provisions of section 8 (l) (d) of the Recovery of Premises Act, and the judge so held.

In the circumstances, I agree with the position of my learned brother O.A. Adeniyi J. that the tenancy between the plaintiff and the defendant is a yearly tenancy and is determinable by six months or half yearly notice, as is prescribed by the provision of section 8 (l) (d) of the Recovery of Premises Act, this is because, it is evident that the defendant as a tenant paid his rent from 2006 to 2007, and that he paid his last rent up to November, 2009, and by the statement of claim, it is not indicated that the tenancy that existed between the plaintiff and the defendant is not a yearly tenancy as the plaintiff is silent on that, however, by the statement of claim it is averred that the defendant paid to the plaintiff through her agent in the sum of N1,000,000.00 for a period from 18th November, 2006 to 17th November, 2007 in respect of the premises, and therefore, it can be inferred that the tenancy between the plaintiff and the defendant is a yearly tenancy, and I therefore so hold.

Now in compliance with the judgment of this court Coram: O.A. Adeniyi J., the plaintiff took step to serve seven (7) days quit notice, instead of the six months notice, while it was held in that case that the notice to be given was the six months notice having held that the tenancy was a yearly tenancy, and even this court in agreeing with the previous court, held that the tenancy is a yearly tenancy, which six months notice ought to have, been given.

In the circumstances of this case, will it be said that the plaintiff has appropriately retraced her step in following the

decision of this court Coram O.A. Adeniyi J., delivered on the 3rd day of July, 2014 which is relied upon by the plaintiff? Certainly, the plaintiff has not complied with as it is evident that she only served seven (7) days quit notice. For ease of reference, let me quote the provisions of section 8 (I) (d) of the Recovery of Premises Act Cap. 544 LFN (Abuja) 2006 which provides:

> **"(I) where there is no express stipulation as to the notice to be given by either party to determine the tenancy, the following periods of time shall be given:**
> **(d) Subject to subsection (2) of this section in the case of yearly tenancy, half a year's notice.**

By the above quoted provisions, it could be inferred to mean that in the absence of any express stipulation as to the notice to be given to determine the tenancy where it is a yearly tenancy, is half a year's notice. In the instant case no evidence is led before this court there is any stipulation as to when the tenancy between the plaintiff and the defendant will determine, and to this, I still hold that the notice the plaintiff ought to have been given to the defendant is a six months notice and not seven days notice, and to this I so hold. Still the plaintiff has taken a wrong step in the recovery of possession of the property under consideration. See the case of **Anyafulu V. Agazie (2007) All FWLR (pt 344) p. 149 at 159; para. G** where the Court of Appeal, Enugu Division held that in taking any steps in the direction of terminating any tenancy, the landlord and tenant law must be jointly followed.

Now the question that needs an answer in the circumstances of this case is: **whether the service of seven (7) days notice instead of six months notice can be taken as an irregularity?** Certainly, it can be treated as an irregularity.

See the case of **Pillars Nig. Ltd. V. William Kojo Desbordes & Anor. 2021 12 NWLR (pt) 126 at 144; paras. C – H. Per Ogunwumiju JSC:**

"Equity demands that whatever and whenever there is a controversy on whom or how notice of forfeiture or notice to quit is disputed by the parties, or even where there is irregularity in giving notice to quit, the filing of an action by the landlord to regain possession of the property has to be sufficient notice on the tenant that is required to yield up possession." In the instant case, the giving of a seven days notice instead of six months notice is an irregularity and to this, I so hold.

Now the next question is: **whether the irregularity can be cured, and how?**

It can be cured and that by filing an action to recover possession of the premises and the service of same on the tenant is sufficient on the tenant that he is required to yield up possession. See the case of **Pillars (Nig.) Ltd V. Desbordes (supra)** where the Apex Court justice went further to say:

> **"Whatever form the periodic tenancy is whether weekly, monthly, quarterly, yearly etc, immediately a writ is filed to regain possession, the irregularity the notice if any is cured. Time to give notice should start to run from the date the writ is served… All the dance drama around the issue of the irregularity of the notice ends."**

In the instant case, there is no any dispute between the plaintiff and the defendant on the irregularity of serving seven (7) days notice instead of the yearly notice to quit or six months, but the court stated the position of the law in that regard.

Thus, by the history of this case, the writ was filed on the 18th October, 2018 and was served on the defendant on the

19th of March, 2019, that is to say, from the date of service to the time of writing this judgment is barely getting to three years, which is beyond the six months notice to quit, and the defendant is still holding over the property. The erudite justice of the Supreme Court in the above cited case also said:

> **After all, even if the initial notice to quit was irregular, the minute the writ of summons dated 13/5/1993 for repossession was served on the appellant, it served as adequate notice. The rise of faulty notice used by tenants to perpetrate possession in a house or property which the landlord had slaved to build and relies on for means of sustenance cannot be sustained in any just society under the guise of adherence to any technical rule."**

In the instant case, I am persuaded to follow the decision of the Supreme Court in having the detail of serving seven (7) days notice instead of six months notice on the ground that the court will not allow the defendant to continue to hold unto the property under the guise that there was a wrong notice to quit, even though the defendant did not contest as to the wrong step taken by the plaintiff.

In the circumstances of this case, the plaintiff is entitled to relief in paragraph (a).

On the relief in paragraph (h) where the plaintiff claims the sum of N13,500,000.00 (Thirteen Million, Five Hundred Thousand Naira only) being arrears of rent from December, 2012 to June, 2018, it is in the witness statement on oath of the PW1 that the defendant's rent was to the tune of N2,250,000 (Two Million, Two Hundred and Fifty Thousand Naira only) per annum from November, 2012 as contained

in paragraph 17 of the statement of claim in that previous case which was relied upon by O.A. Adeniyi J., and I have painstakingly gone through the judgment, EXH. "A2", and have not seen where the court arrived at the rent payable by the defendant as of November, 2012 stands at the rate of N2,250,000.00. In addition to that, the plaintiff has not stated in her statement of claim and witness statement on oath as to how she arrived at that figure, that is to say, claim of the sum of N13,500,000.00 as arrears of rent has not been particularised. See the case of **Buhari V. Obasanjo (2005) All FWLR (pt 273) p. 94 para. B** where the Supreme Court held that on pleadings, particulars must be given, and the adversary must not be taken by surprise.

However, for the fact that this assertion or rather the evidence of the plaintiff has not been controverted by the defendant, I hold the view that the plaintiff is entitled to the relief, at the rate of N1,500,000.00 as evidenced in the judgment of the previous court from the month of December, 2012 to June, 2018.

On the relief in paragraph (c), the plaintiff is entitled to mesne profit from the date the notice to quit EXH. "A3" was given that is from the 11th day of June, 2018 till the vacant possession is given to the plaintiff at the rate of N1,500,000.00 (One Million, Five Hundred Naira only) per annum.

On the relief in paragraph (d) which is the cost of action. No amount of money is claimed on the endorsement to the writ and the statement of claim, and it is not in evidence as to what the plaintiff incurred in filing this suit, however, by the assessment at the Registry of this court on the face of the writ, it shows that the plaintiff has paid the sum of N4,500.00 (Four Thousand, Five Hundred Naira) only as fees, and to this, the said sum of N4,500.00 (Four

Thousand, Five Hundred Naira) only is awarded to the plaintiff as cost of filing this suit.

Hon. Judge
Signed
8/2/2022

Appearances:

Abbas Yahaya Esq appearing with Y.D. Mu'azu Esq for the plaintiff.

CC-CT: The defendant is not in court but he is on notice for day's activity, and his counsel also not court.