

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS
COURT: 28**

DATE: 2nd February, 2022

FCT/HC/CV/283/2018

BETWEEN:-

GODWIN N. IKE (TRADING UNDER THE NAME ----- CLAIMANT

AND STYLE OF GODDY IKE & PARTNERS)

AND

ENGR. KOLA BALOGUN-----

DEFENDANT

JUDGMENT

The suit was initiated by an amended writ of summons dated 21st October, 2019 and filed on the same day whereof the Claimant claim against the Defendant as follows:-

1. An order of this Honourable Court directing the Defendant to vacate and deliver up possession of the 3 bedroom flat situate at flat B2 No. 9A Ndjamenana Street, Off Aminu Kano Crescent , Wuse 2, Abuja to the Claimant without any further delay.
2. An order directing the Defendant to pay the sum of ₦1.041, 666.65k being arrears of rent from 1st June, 2018 to 31st October, 2018 (5 Months) at the rate of ₦208, 333.33k per month until possession is given.
3. An order directing the Defendant to pay the sum of ₦208, 333.33k per month being mesne profit from 1st November, 2018 till judgment is given and thereafter till vacant possession is delivered to the Claimant.

4. An order directing the Defendant to either renovate or pay the sum of ₦6,000,000.00 to the Claimant for the renovation of his property.
5. An order of Court directing the Defendant to pay the sum of ₦600, 000.00 being the cost of this suit to the Claimant.
6. 21% interest on total judgment sum from date of judgment till final liquidation of same by the Defendant.
7. The sum of ₦2,000,000.00 as exemplary and punitive damages to the Claimant for wrongful detention of the 3 bedroom flat and deprivation of financial benefits accruing to the Claimant by the Defendant.

Attached to the Application is the Claimant's witness statement on oath deposed to by the Claimant himself wherein he averred inter alia that he is the land lord of a 3 bedroom flat know as flat B2 situate at No Ndjamena Street, Off Aminu Kano Crescent, Wuse 2, Abuja.

That the Defendant is a tenant occupying 3 bedroom flat situate at the address listed above.

That the parties to this suit entered into a tenancy agreement on the 15th September, 2008, that the Defendant paid the sum of ₦3,000,000.00 for 2 years at rate of ₦1,500,000.00 for one year from 15th September, 2010 to 14th September, 2011 and ₦75,000.00 as admin charges the rent was reviewed at the expiration of the tenancy to, ₦2,000,000.00 per annum inclusive of ₦100,000.00 administrative charges. The Defendant paid his rent as at when due at the rate of ₦2,500.00 for each year inclusive of all admin charge up till 14th September,2016.

The Defendant has refused to deliver up possession of the flat despite the notice to quit and notice of intention to apply to recover possession both notices have since expired but the Defendant has refused to deliver up vacant possession. That the Defendant rent per month is ₦208,333.33k being mesne profit from November, 2018 till judgment is delivered the Defendant refused to enter his defence same did not file anything.

Having adopted his witness statement on oath the Claimant went and told the Court graphically how the relationship between them exist. In addition the tenancy agreement dated 15th September, 2008 between the Claimant and the Defendant was also admitted in evidence and marked as exhibit 2. Equally the certificate of registration owned by the claimant dated 14th September, 1999 was also admitted in evidence and marked as exhibit 1. The original receipt agency payment of rent paid by the Defendant to the Claimant was also admitted in evidence and marked as exhibit 3 same was dated 14th October, 2010. Similarly another copy of receipt issue by the Claimant to the Defendant dated 27th October, 2011 was also received in evidence and marked exhibit 4. The two notices namely notice to quit and notice of owners intention to recover possession are also received in evidence and marked as exhibit 6A and 6B respectively. Affidavit of facts was also admitted in evidence and marked as exhibit 6C. As stated in the beginning of this judgment despite the service of the Claimants processes and hearing notice at different times the Defendant never appeared in Court or filed any process in opposition. Now I recognize that fair hearing is a fundamental element of any trial process and it has some key

attributes these include that the Court shall hear both side of the parties on all material issues and also give equal treatment , opportunity and consideration to parties. See ***OSENI VS DUKE (2004) 7 NWLR (pt871) 16 ESHENAKE VS GBINIJI 92006) 1 NWLR (pt691) 228.***

Having reproduced the position of the Claimant aforesaid the basic principle of law is that where a Defendant fail to file a defence he will be deemed to have admitted the claim or relief in the statement of claim see ***FATIMEHIN VS LAWAN (2014) LPELR 23476 CA.***

Facts not challenged nor contraverted are deemed admitted see ***OKOEBAR VS POLICE Counsel (2003) 12 NWLR (pt.834) 444.*** The evidence adduced by the Claimant un-contradicted and un-contraverted in such circumstances only a minimum proof is required. In such circumstances the Defendant will be deemed to have admitted the claimants claims in the statement of claims this is based on the principle that where a Defendant dispute the Claimants claim or case, he must file a statement of defence and lead evidence thereon at the trial. See ***EGE SHIPPING TRADING INC AND OTHERS S. TIGERS INTL. CORPORATION (1999) 14 NWLR (pt 637) page 70 at 84-85*** where no defence is filed as in the present case the Defendant is deemed to have admitted the assertion and the Court may enter judgment against them. In case where the Defendant files no defence the standard of proof cast on a Claimant is a minimal one. See ***KHALAD BARAKET CLAIMS VA UBA PLC (2020) SCNJ (pt 23) at 31-40 see also MAJEKODUNU & ORS VS OGUNSEYE (2017) LPELR 42547.***

CA. In the cause of trial the Claimant in this case gave testimony on how the tenancy agreement between the Claimant and the Defendant was executed.

It must however be noted that notwithstanding the primacy of the right of fair hearing in any well conducted proceedings, it is however a right that must be circumscribed within proper limits and not allowed to run valid. No party has till eternity to present or defend any action see **LONDON BOROUGH OF HUNSLAR VS TWICKEAHAR GARDEN DEV LTD (1970) 3 ALLER 326 at 313**. The Defendant have been given every opportunity to respond to the allegations of Plaintiff and they have exercised their right not to respond. Nobody begrudges this case. It is only opposite to reiterate that nobody is under any obligation to respond to any court processes if he or she so choose. I leave it at that. On the stance of the pleadings and evidence, the two issue can be properly streamlined under one issue raised by the Court hereunder which is simply whether the Plaintiff has proved his case to be entitled to any or all of the reliefs claimed in this suit. This sole issue or single issue conveniently accommodates the issue raised by the Plaintiff and captures succinctly the pitch or cru of this dispute that remains to be resolved shortly by Court and it is therefore on the basis of this issue that I would now proceed notwithstanding the above general principle the Court is however still under a duty to examine the establish facts of the case and then see whether it entitles the claimant to the reliefs sough. I find support for this in the case of **NNANDI AZIKUE UNIVERSITY S NWAFOR (1999) I NWLR (pt 585) 116 –**

140 -141 where the Court of Appeal per Salisu JCA (as he then was) expounded the points thus:-

"The Plaintiff in a case is to succeed on the strength of his own case and not on the weakness of the Defendant or failure or default to call or produced evidence. The mere facts that a case is not Defended does not entitled the trial Court to over look the need to ascertain or prove the facts adduced before it established or prove the claim or not. In this vein, a trial Court is at no time relieved of the burden of ensuring that the evidence adduced in support of a case sustains it irrespective of the position of the Defendant....."

A logical corollary that follows the above instructive dictum is the attitude of Court to the issue of burden of proof where it is not satisfactorily discharged by the party upon which the burden lies. The Supreme Court in ***DURU VS NWOSU (1989) 4 NWLR (pt113) 24*** stated thus:-

"..... a trial Court ought always to start by considering the evidence led by the Plaintiff to see whether he had led evidence on the material issue he needs to prove. If he has not so led evidence or is the evidence led by him is so patently unsatisfactory, then he had not made out what is usually referred to as a

prima facie case, in which case the trial judge does not have to consider the case of the Defendant at all”

From the above, the point appears sufficiently made that the burden of proof lies on the Plaintiff to establish his case on a balance of probability by providing credible evidence to sustain his claim irrespective of the presence and/or absence of the Defendants see ***AGU VS NNADI (1999)2 NWLR (PT 589) 131- 142.***

From the Pleading in this case which is in law what presently streamlines the issue and facts in dispute. The Plaintiff cause of action is essentially premised on tenancy relation. From the unchallenged testimony of PW1 in this trial and the exhibits tendered I am satisfied that the claimant had adduced satisfactory evidence based on his claim not all the claim. I therefore find and hold that from the totality of the evidence adduced the Plaintiff have established some of the Claim brought before this Court. The finding I have made in my examination of the case generally is that the Claimant has established his case some of the claim not all. The claim of the Plaintiff have been set out at the beginning of this judgment. Consequently judgment is hereby entered in favour of the Plaintiff against the Defendant as per claim No. 1,2,3, and 5 only.

HON. JUSTICE M.S IDRIS
(Presiding Judge)