

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT NYANYA
ON MONDAY 28TH APRIL, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE EDWARD OKPE

SUIT NO. FCT/HC/CV/2358/2021

BETWEEN:

WAMOYE VENTURES LIMITED CLAIMANT
AND
ABUBAKAR DAYYABU KURFI DEFENDANT

JUDGMENT

The Claimant in this suit on 16/09/21 caused to be issued a Writ of Summons against the Defendant claiming the reliefs as contained in therein as follows:

- i. **A DECLARATION** that the Defendant's tenancy in respect of Plot No. 1161 Yusuf Maitama Sule Street, Asokoro, FCT, Abuja, subject matter of this suit, is properly determined.
- ii. **A DECLARARTION** that the Plaintiff is entitled to mesne profit, in the sum of N1, 000,000.00 (One Million Naira) for every month and N32, 258.00 (Thirty-Two Thousand, Two Hundred and Fifty-Eight Naira) per day, for the unpaid period the Defendant holds the premises, known as Plot NO. 1161 Yusuf Maitama Sule Street, Asokoro, Abuja FCT, subject matter of this suit, from 30th of January, 2019 till date.

- iii. **AN ORDER** of this Honorable Court directing the Defendant to deliver up possession of the said property, known as Plot No. 1161 Yusuf Maitama Sule Street, Asokoro, Abuja, FCT.
- iv. **AN ORDER** of this Court ejecting the Defendant from the property, subject matter of this suit, known as Plot No. 1161 Yusuf Maitama Sule Street, Asokoro, Abuja, FCT.
- v. **AN ORDER** of this Court mandating the Defendant to pay the total sum as computed in (ii) above, as appropriate up to the date of delivery of vacant possession.
- vi. **AN ORDER** directing the Defendant to pay the plaintiff a post judgment interest of 10% from the date of judgment is liquidated by the Defendant.

Following the service of the writ of summons and hearing notices on the defendant, the defendant exercised its constitutional right not to participate in this proceedings nor file any process thereto.

The defendant did not cross-examine the Claimant's witnesses. On 17/3/22 the matter was adjourned to 29/3/22 in order for the Defendant to cross examine the Claimant's witnesses (PW1 and PW2) and enter his defence if any. The Defendant was served hearing notice against that date unfortunately the Defendant never showed up in court on that day to cross examine the Claimant's witnesses (who were in court) and enter his defence. Consequently, upon the Claimant's counsel application the Defendant's right to cross examine the Plaintiff's witnesses and enter defence was foreclosed and the court ordered for the final written addresses of the parties.

The Defendant again refused to file her final written address despite the service of the Plaintiff's final written address on it.

On 21/4/22 after the court discovered that hearing notice and Plaintiff's final written address had been served on the Defendant allowed the Plaintiff's counsel to proceed to adopt the Plaintiff's final written address as the Plaintiff's submission in urging the court to grant the prayers contained in the suit.

I have carefully read the said Written Address of Counsel for the Claimant. I have also considered the evidence led and all the processes filed in this suit for recovery of premises. Reference will be made to them as the need arises. The issue for determination is in my view:

Whether the Claimant has been able to prove the facts stated in the writ of summons to entitle it to the reliefs sought herein.

The Claimant gave evidence as contained in paragraphs 3, 4,5,6,7,8,9,10,11,15,16 and 18 of its statement of claim which was not contested by the Defendant or any witness called by him. Therefore, Claimant's evidence summarised above is not contradicted and same is accepted by this court as the naked truth. See the cases of **OWENA MASS TRANSPORT CO. LTD vs OKONOGBO (2018) LPELR 45221; OKEREKE VS STATE (2016) LPELR; IJEBU ODE LG vs ADEDEJI (1991) LPELR-SC; CHIEF SUNDAY OGUNYADE vs SOLOMON OLUYEMI ISHUNKEYE & ANOR (2007) 7 SC PT 11 60; ODULAJA vs HADDA (1973) 11 SC 357.**

The supreme court in the case of **OBE V. MTN NIG COMMS LTD (2021) 18 NWLR (PT. 1809) 415 at 436** held:

".. In all civil suits, the onus to prove a particular fact or a case in general is on the party who asserts, since civil suits are determined on the balance of probability and preponderance of evidence, a party who proves his case will obtain judgment based on such preponderance of evidence and balance of probability in his favour..... Thus, he who asserts or claims a relief must prove it by credible evidence and judgment and grant for such claim must be based on legal evidence of strong probative value and weight."

The claimant on whom the initial burden lies testified in evidence through its witnesses as PW1 and PW2 in their witness statement on oath before this court and all their testimonies as contained therein are in tandem with the statement of claim and have not being refuted by the defendant.

In further prove of its case, the Claimant through PW1 and PW2 tendered exhibits WVL-1 to WVL-5.

For a party to succeed in the suit of this nature, there has to be prove of service of a valid quit notice and seven days owners' intention to recover possession served on the defendant who is to yield possession. See the case of IHENACHO & ANOR V. UZOCHUKWU & ANOR (1997) LPELR - 1460 SC cited and relied on by the claimant. See also the case of PHILOMENA MBUA EKPE, JCA (P.19 -21 paras B-E) cited and relied on by the claimant where my lord quoted Honourable Justice Niki Tobi in the case of UHUANDHO V. EDEGBE (2017) LPELR -42162 (CA)

"..I also refer to the dictum of the renowned jurist of blessed memory - Niki Tobi where he stated in the case of OKETADE V. ADEWUNMI (supra) at 517 paras f - 11 as follows: ".. Why and why, I ask? Is he the owner of the property? Why is he so adamant? The appellant's bluff

and use of the court process must stop, whether he likes it or not. And it must stop today because I cannot see how a tenant will struggle for supremacy or hegemony over a property that he did not build, and perhaps did not know when and how the property was built. I do not blame the Appellant, but I blame the law that has given the appellant such latitude and effrontery to use the processes of the court to stay on a property he does not own for a period of fourteen years. This looks to me as a typical example of the aphorism or cliché that the law is at times an ass. I must quickly remove the ass content in the law and face the reality of law."

In the instant case, there is evidence before the court in the testimony of PW1 and PW2 that the defendant was duly served with the Statutory Notice to quit and Seven days owners' intention to recover possession.

The claimant by paragraphs 15 and 16 of its statement of claim, paragraphs 16, 17 & 18 of PW1 and PW2 witness statements on oath and Exhibits WVL-4 and WVL-5 has duly complied with the requirement for the recovery of possession and I so hold.

It is also the requirement of the law that before the quit notice and owners' intention to recover property can be served on the defendant, the tenancy must have been determined by efluxion of time or expired. Looking at the tenancy agreement between the parties it is very clear that the tenancy of the defendant in respect of Plot No. 1161 Yusuf Maitama Sule Street, Asokoro, Abuja FCT subject matter of this suit expired since 2018 and therefore properly determined.

I am also of the firm view that the claimant is entitled to the claim of mense profit clamed on the property as the defendant is in continues

occupation of same and having established that the defendant is still holding over. See **OSOWARU V. EZERUKA (1978) 6.7 SC** and **AYINKE VS. LAWAL & ORS (1994) LPELR-680 SC**. In **ABIKE V. ODUNSI (2013) 13 NWLR PT.13701 1 AT 27 PARAGRAPHS A-D**, the learned jurist **ARIWOLA JSC** had this to say:

"..The expression simply mesne intermediate profit that is the profit accruing between two points of time, that is between the date when the defendant ceased to hold the premises as a tenant and the date he gives up possession. As a result, the action for mesne profit, ordinarily does not lie unless either the landlord has recovered possession or the tenant's interest in the land has come to an end or the landlord's claim is joined with a claim for possession."

It is the case of the Claimant before the court particularly from exhibit WV-1 and the uncontroverted evidence of the 1st claimant's witness that the tenancy agreement between the parties was determined on 29th November 2018 when the two year term expired and the defendant did not renew same.

In the light of the above, I am satisfied there is merit in the claims of the claimant. Consequently, I make the following orders:

1. It is hereby declared that the Defendant's tenancy in respect of Plot No. 1161 Yusuf Maitama Sule Street, Asokoro FCT, Abuja, subject matter of this suit is properly determined.
2. It is hereby declared that the Plaintiff is entitled to mesne profit, in the sum of N1, 000,000.00 (One Million Naira) for every month and N32, 258.00 (Thirty-Two Thousand, Two Hundred and Fifty-Eight Naira) per day, for the unpaid period the Defendant

holds the premises, known as Plot NO. 1161 Yusuf Maitama Sule Street, Asokoro, Abuja FCT, subject matter of this suit, from 30th of January, 2019 till date.

3. An Order is hereby made directing the Defendant to deliver up possession of the said property, known as Plot No. 1161 Yusuf Maitama Sule Street, Asokoro, Abuja, FCT.
4. An Order is hereby made ejecting the defendant from the property, subject matter of this suit, known as Plot No. 1161 Yusuf Maitama Sule Street, Asokoro, Abuja, FCT.
5. An Oder is hereby made mandating the Defendant to pay the total sum computed in (ii) above, as appropriate up to the date of delivery of the vacant possession.
6. An Order is hereby made directing the Defendant to pay the plaintiff a post judgment interest of 10% from the date judgment is liquidated by the defendant.

Appearnces:

HON. JUSTICE EDWARD OKPE
(JUDGE)
28/4/22