IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT NYANYA
ON FRIDAY 3RD JUNE, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE EDWARD OKPE

SUIT NO: FCT/HC/CV/1916/2018

BETWEEN:

WOLE KAJOLA ---------- PLAINTIFF
(Trading under the name and style of WOLE KAJOLA & ASSOCIATES)

AND

EMMANUEL IGWEBUIKE ---------- DEFENDANT

JUDGMENT

The Plaintiff in this suit on 28/5/2018 caused to be issued a writ of summons against the defendant claiming the reliefs as contained in the statement of claim as follows:

a). **AN ORDER** that the Defendant delivers possession of the property at No. A. 3, Lake View Estate, Kado Phase 1, Abuja to the Plaintiff immediately upon judgment being delivered.

b). **AN ORDER** that the Defendant pays the sum of N9, 700,000.00 (Nine Million, Seven Hundred Thousand Naira) only being rent arrears from November 1, 2014 to October 30, 2028.

c). **AN ORDER** that the Defendant pays a mesne profit of N333, 333, 34k (sic) (Three Hundred and Thirty – Three Thousand, Three Hundred and Thirty – Three Naira, Thirty – four kobo) only per month with effect from November 1, 2018 until possession of the property is yielded up.

d). **AN ORDER** that the Defendant pays to the plaintiff the sum of N400, 000.00 (Four Hundred Thousand Naira) only being sum paid by the Plaintiff to his Solicitor's for this suit which sum he would have not paid but for the refusal of the Defendant to pay his rent.

e). **Cost** of this suit.

The Defendant was duly served with the writ of summons and all the requisite hearing notices throughout the pendency of this action. However, the defendant elected not to defend this action as no process was filed in opposition, and there was no appearances whatsoever on its behalf. The approach adopted by the defendant in my view, is within the constitutional right of the defendant not to defend this action. At plenary, the plaintiff personally testified as PW1 and tendered Exhibits WK - 1 and WK - 2. The defendantwas given ample opportunity to cross-examine PW1, but failed to take advantage of this window of opportunity.

In a related development, the defendants failed/neglected to take advantage of the opportunity to defend plaintiff's claim after the action was adjourned for defense. The matter was adjourned to 6/4/22 for the defendant to enter his defence, if any. On that day, despite the fact that the defendant was served hearing notice against that day, the defendant never showed up in court to enter his defence. Consequently, upon the plaintiff's counsel application his right to enter defence was foreclosed and the court ordered for the final written addresses of the parties. Pursuant to the order of the court, only the plaintiff's counsel filed final written address and same was adopted by his counsel.

I have carefully considered the final written address of the counsel for the plaintiff and all the processes filed in this suit for recovery of premises. I have also considered the statement of claim and the evidence led by the plaintiff, and I form the view that the sole issue for determination ought to be set down thus:

> **"Whether the Plaintiff has been able to prove the facts stated in the writ of summons to be entitled to the reliefs sought herein."**

The plaintiff through PW1 testified and gave evidence as contained in paragraphs 4a – 4p of his Witness Statement on Oath which was not contested by the defendant or any witness called by them.

The Supreme Court in the case of **OBE V. MTN NIG COMMS LTD (2021) 18 NWLR (PT.1809) 415 AT 435** 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 plaintiff on whom the initial burden lies testified in evidence through its witness as PW1 in his witness statement on oath before this court and all his 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 plaintiff tendered exhibits WK-1 – WK-2.

In the instant case, there is evidence before the court in the testimony of PW1 that the defendant was duly served with the Statutory Seven days owners' intention to recover possession. I agree with the submission of the plaintiff counsel in paragraph 3.05 of his final written address that a yearlytenant becomes a tenant at will once his tenancy has expired by effluxion of time and he is in arrears of rent and he is holding over the premises, the only notice he is entitled to is seven days owner's intention to recover possession and not a quit notice see the case of **ODUTOLA V. PAPERSACK (NIG) LTD (2006) NWLR (PT.1012) 470** cited and relied on by the plaintiff's counsel wherein the Supreme Court held:

"…While I agree that a tenant at will can be converted to a yearly tenancy and vice-versa, the position in this case is that it is the yearly tenancy that was converted to a tenancy at will….. And here, I hold that when the yearly tenancy ended in 1980, the tenancy at will commenced and the 'holding over' started immediately thereafter…. In **PAN ASIAN AFRICAN CO LTD V. NATIONAL INSURANCE CORPORATION (NIG) LTD., (1982) ALL NLR 229**, this court held that holding over without consent of the landlord makes the tenant a tenant at will."Per Tobi, JSC. (P.30, PARAS e-g)

The claimant by paragraphs 11 of its statement of claim, paragraphs 4(L) of PW1 witness statements on oath and Exhibit WK-2 has duly complied with the requirement for the recovery of possession as provided in Sections 7 and 8 of the Recovery of Premises Act, Vol 4 laws of FCT, Abuja and I so hold.

It is also the requirement of the law that before the owners' intention to recover property can be served on the defendant, the tenancy must have been determined by efluxion of time or expired. Paragraph 5 of the plaintiff statement of claim and paragraph 4(f) of the witness statement on oath which was not contradicted by the defendant, it is clear that the tenancy of the defendant in respect of Plot No. A. 3, Lakeview Estate, Kado Phase 1, Abuja FCT subject matter of this suit expired since October 30, 2016 and therefore properly determined.

I am also of the firm view that the claimant is entitled to the claim of mesne profit as contained in the reliefs sought on the property as the defendant is in continued 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."*

See also **AHMED DEB's OBI V. CENICO (NIG) LTD (1986) 3 NWLR (PT. 32) 846** wherein Oputa JSC stated thus:

> *"….action for Mesne Profit does not lie unless either the landlord has recovered possession, or the tenant's interest in such land has come to an end, or his claim is joined with possession."*

From the reliefs sought for by the plaintiff in this court, his claim for mesne profit is joined with the relief for possession. See the reliefs sought by the claimant earlier reproduced herein.

It is not in dispute that the rent paid by the defendant for the premises occupied by him is per annum while in lawful occupation of same. The said tenancy expired on 30/10/16. The claimant's evidence through PW1 establishes a basis for the claim for such amount of money as Mesne Profit.

It is the case of the Claimant before the court particularly from exhibit WK 2 tendered and the uncontroverted evidence of PW1 that the tenancy agreement between the parties was determined on 30th October 2018 when the term expired and the defendant did not renew same.

It is not in contention that the yearly rent of the defendant is the sum of **₦4, 000, 000.00 (Four Million Naira)** as this was established via exhibit WK 2 tendered and the evidence of the plaintiff's witnesses (PW1) in this suit.

The claimant having established the amount payable per year, the claimant is entitled to a mesne profit of the sum of**₦333, 333.34 per month with effect from 1/11/2018** until possession of the property is yielded up.

The subterfuge of tenants, like the defendant using the issue of none service of notice or service of defective notice on them, to hold unto the property of another till thy kingdom come without paying rent as in the instant case has recently being settled by the Supreme Court in the Case of **PILLARS NIG. LTD VS. WILLIAM DESBORDES & ANOR (2021) 12 NWLR PT. 1789 122 at 144** where the Supreme Court held:

> *"….. After all, even if the initial notice to quit was irregular, the minute the writ of summons dated 13/5/1993 for possession was served on the appellant, it served as adequate notice. The ruse of faulty notice used by tenants to perpetuate possession in a house or property which the landlord has starved 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. Equity demands that whatever and whenever there is controversy or notice to quit is disputed by the parties, or even where there is irregularity in giving notice to quit, the filing of action by the landlord to regain possession of the property has to be sufficient notice on the tenant that he is required to yield up possession. I am not saying here that statutory and proper notice to quit should not be given. However, from the periodic tenancy, whether weekly, monthly, quarterly, yearly etc…, immediately a writ is filed to regain possession, the irregularity of the notice if any is cured. Time to give notice should start to run from the date the writ is served. If for example, a yearly tenant, six months after the writ is served and so on. All the dance drama around the issue of irregularity of the notice ends. The court*

would only be required to settle other issues if any between the parties."

See also the case of **BANKOLE & ANOR V. OLADITAN (2022) LPELR-56502 (CA)** and **EFREDE V. ITA (2021) 9 NWLR PT. 1780 90.**

In the cases of **IHENACHO & ANOR V. UZOCHUKWU & ANOR (1997) LPELR-1460 SC and UHUANDHO V. EDEGBE (2017) LPELR – 42162 (CA). In UHUANDHO V. EDEGBE (SUPRA)** my lord Philomina MbuaEkpe, JCA quoted Honourable Justice Niki Tobi thus:

"..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."*

Relying on the above cases, I make bold to say that the defendant has had more than enough adequate notice for him to vacate the claimant's property. According the record of this court which shows that the defendant in this suit was served with the claimant's writ of summons on the 10/7/18 and till date, the defendant is still in the property despite having more than enough adequate notice to have vacated the claimant's property.

The net effect of the forgoing decisions in the light of the facts and circumstances of this case is that the defendant have admitted that the Plaintiff is entitled to the reliefs sought.

I agree that the defendant who failed to defend the suit against him is deemed in law to have admitted the case of the plaintiff as stated in his statement of claim.

The plaintiff through PW1 testified on oath, and his testimony was supported by documentary evidence, Exhibits WK-1 and WK-2. See the case of BAC **ELECTRICAL CO. LTD V. ADESINA (2020) 14 NWLR PT. 548 AT 565** where it was held:

> ***"… When documentary evidence supports oral evidence, such oral evidence becomes more credible. This premised on the position of the law that documentary evidence serves as hanger from which to assess oral testimony."***

The oral and documentary evidence of the plaintiff has not been contradicted by the defendant. The defendant was given every opportunity to enable him place his own side of the story before the court but he chose not to utilize it. In the circumstances, I am satisfied that the plaintiff has established its entitlement to the reliefs sought against the defendant.

It is settled law that a court of law when faced with unchallenged or uncontroverted evidence, is entitled to believe such evidence and to give it full weight and value. I therefore agree with the unchallenged and uncontroverted evidence of the plaintiff. See the cases of **NATIONAL INSURANCE CORPORATION OF NIGERIA (NICON) V. POWER AND INUDRTIAL ENGINEERING CO. LTD (1986) 1 NWLR PT.14 1 AT 27 and DANLADI V. TARABA STATE HOUSE OF ASSEMBLY (2015) ALL FWLR PT.804 AT PAGE 2024 PARTICULARY AT 2036 PARAGRAPH H.**

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.**

On the claim of **N400, 000.00 (Four Hundred Thousand Naira**) as legal fees by the Plaintiff, I will simply refer to the cases of **NWAJI V. COASTAL SERVICES (NIG) LTD (2004) 11 (PT.885) 552; IHEKWOBA V. A.C.B LTD (1998) 10 NWLR (PT.571) and SPDN V. OKE (2018) 17 NWLR (PT.1649) 420** that this head of claim is un-grantable in this Country.

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

1. **An Order** is hereby made that the Defendant delivers possession of the property at No. A, 3. Lake View Estate, Kado Phase 1, Abuja to the plaintiff immediately.

2. **An Order** is hereby made that the defendant pays the sum of **N9, 700,000.00 (Nine Million Seven Hundred Naira)**only being rent arrears from November 1, 2015 to October 30, 2018.

3. **An Order** is hereby made that the Defendant pays a mesne profit of **N333, 333, 34K (Three Hundred and Thirty – Three Thousand, Three Hundred and Thirty – Three Naira, Thirty – four kobo)** only per month with effect from November 1, 2018 until possession of the property is yielded up.

4). **An Order**is hereby made that the Defendant pays to the plaintiff the sum of **N200, 000.00 (Two Hundred Thousand Naira)** only being cost awarded in favour of the plaintiff against the defendant.

Appearances: Gabriel Esegine with E.C. Nwibo for the Claimant.

HON. JUSTICE EDWARD OKPE
(JUDGE)
3/6/22