

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT COURT NO. 4, MAITAMA ON THE**  
**7<sup>TH</sup> DAY OF JULY, 2022**

**BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE**

**SUIT NO. FCT/HC/CV/2332/2018**

**COURT CLERKS:** *JOSEPH ISHAKU BALAMI & ORS.*

**BETWEEN:**

**HERBERT DIKE** .....

**CLAIMANT**

(Trading under the name  
and style of DIKE & CO.)

**AND**

**AMB. MAHMUD S. UMORU** ..... **DEFENDANT**

**JUDGMENT**

The Claimant's Writ of Summons and Statement of Claim is dated and filed on the 13<sup>th</sup> day of July 2018. It is praying this Court for the following:

- 1) An Order of Court ejecting the Defendant, his privy, agent and or any person from all that property situate and known as 7-Bedroom Detached Duplex

with a 3-Room BQ at No. 3, Yusuf Bala Street, Asokoro, Abuja.

- 2) ~~₦~~10 Million only being arrears of rent commencing from 15<sup>th</sup> of August 2014 to 14<sup>th</sup> of August 2017.
- 3) ~~₦~~16,666.07k arrears of rent per month from the 15<sup>th</sup> August 2017 till possession is given up.
- 4) ~~₦~~5,000,000.00 as cost of repairs.
- 5) ~~₦~~5,000,000.00 as solicitor's fee.
- 6) Cost of the action.

The Writ of Summons, Statement of Claim and all other processes were served on the Defendant on the 12<sup>th</sup> day of December 2018.

The Defendant's Counsel, Abdulaziz Ibrahim entered appearance vide an Unconditional Memorandum of Appearance dated 12/01/2022 but filed on the 13<sup>th</sup> of

January 2022. He failed, neglected and or refused to file a defence.

The Claimant opened his case and called two (2) witnesses in proof of same. The first Claimant's witness is the Claimant, Herbert Dike. He is an Estate Surveyor. He remembers making a Witness Statement on Oath deposed to on 13/07/2018.

He deposed that he is the Manager of all that property situate and known as 7-Bedroom Detached Duplex with 3-Room BQ and all its appurtenances situate at No. 3, Yusuf Bala Street, Asokoro, Abuja.

The Defendant is a tenant who occupies a 7-Bedroom Detached Duplex with 3-Room BQ and all its appurtenances in the said address.

That he carries on business in the name and style of Dike & Co. That Defendant is a yearly tenant at the said property. He was let into possession vide a Tenancy Agreement dated 15/08/2011. The tenancy commenced on 15/08/2011 to

expire on 14/08/2013. The annual rent was ~~₤~~5 Million. The last rent paid by the Defendant was for the period of 15<sup>th</sup> August 2014 – 14<sup>th</sup> August 2015.

That the Defendant had since refused to renew his rent. By a letter dated 11/04/2015, the Defendant was notified of his intention to renovate the said property. He asked the Defendant to vacate the premises at the expiration of his rent.

On the 27<sup>th</sup> of May 2015, the Defendant was served with a three-month Notice to Quit which expired on the 31<sup>st</sup> August 2015. The Notice was served through Red Star Express.

Despite the letter of 11/04/2015 and the Quit Notice, the Defendant refused to vacate the premises. That Defendant was served with a 7-Day Notice to Quit dated 14/05/2018. That despite the service of the said 7-Day Notice, the Defendant failed to vacate the premises. A 7-Day Notice of Owner's Intention to Recover Possession was also served at the expiration of the 7-Day Quit Notice.

The Defendant's rent expired on the 14<sup>th</sup> of August 2015. The Defendant is still holding over. That the building has been grossly misused. That it will cost N5 Million to restore same to a tenantable condition.

The witness tendered the following exhibits:

Exhibit A – Tenancy Agreement.

Exhibits B and B1 – Copy of the cheque dated 15/07/2014 for ₦5 Million and Receipt of payment.

Exhibit C – Letter from Dike & Co. to Defendant dated 11/04/2015.

Exhibits D and D1 – 7-Day Quit Notice and Red Star Waybill dated 27/05/2015.

The second Claimant's witness is Aminu Mohammed. He is a Civil Servant. He deposed to a Witness Statement on Oath on 11/10/2019. He adopted same as his oral evidence. He is a staff of the High Court.

He deposed that sometime in May 2018, the Claimant asked him to serve a 7-Day Quit Notice. That on the 14/05/2018, he served same by pasting same at the gate of the demised property. He deposed to an Affidavit of Service.

That at the expiration of the 7-Day Quit Notice, he was equally asked to serve a 7-Day Notice of Owner's Intention to Recover Possession which he did by pasting same on the 28/05/2018 at No. 3, Yusuf Bala Street, Asokoro, Abuja.

Exhibits E and E1 are copies of 7-Day Quit Notice and Affidavit of Service.

Exhibits E2 and E3 are 7-Day Notice of Owner's Intension to Recover Possession and Affidavit of Service.

The Defendant failed to cross-examined the witness. He also failed, refused and or neglected to enter his defence despite service of Hearing Notices.

Claimant's Counsel adopted his Final Written Address dated 1<sup>st</sup> November 2021 and raised one (1) issue for determination which is:

*Whether having regard to the evidence and the facts pleaded, the Claimant has proved his case to be entitled to the reliefs sought as contained in the Writ of summons.*

Learned Counsel submits that the Tenancy Agreement which is Exhibit A is duly executed by the Claimant and the Defendant. That there is a tenancy relationship between the Claimant and the Defendant. That the said tenancy was terminated in accordance with Sections 7 and 8 of the Recovery of Premises Act. That the Claimant has fulfilled the condition for the recovery of premises.

The tenancy was for a term certain, i.e. two (2) years certain. That the tenancy expired by effluxion of time. Exhibit E2 is the Notice of Owner's Intention to Recover Possession.

That the evidence of PW1 and PW2 was not challenged. He argued that an unchallenged evidence is deemed to be correct and can be acted upon by the Court.

That the Claimant has presented credible and convincing evidence to be entitled to the reliefs sought.

This case is fought on a one sided evidence. The Defendant was served. A Counsel entered appearance for him. He appeared on 17/01/2022 and vanished into thin air. His Motion for extension of time was struck out for lack of prosecution. There is no evidence on the other side.

By Section 7 of the Recovery of Premises Act Cap 544 Laws of the Federation (Abuja):

*"When and so soon as the term or interest of the tenant of any premises held by him at will or for any term to either with or without being liable to the payment of any rent ends or is duly determined by a written notice to quit as in Form B, C or D whichever is applicable to the case or otherwise duly determined and the tenant or if the tenant does not actually occupy the premises or only occupy a part thereof, a person by whom the*



*premises or any part thereof is actually occupied neglects or refuses to quit and deliver up possession of the premises or of such part thereof respectively, the landlord of the premises or his agent may cause the person so neglecting or refusing to quit and deliver, to be served in the manner hereinafter mentioned a written notice as in Form E signed by the landlord or his agent, of the Landlord's intention to proceed to recover possession on a date not less than 7 days from the date of service of the said Notice."*

I have perused Exhibit A the Tenancy Agreement. It is for two (2) years certain. The Tenancy Agreement is dated 15/08/2011. It commenced on 15/08/2011.

The evidence is that the last payment made was N5 Million for 15<sup>th</sup> August 2014 – 14 August 2015. The Receipts are Exhibits B and B1.

Exhibit D is a Quit Notice issued and served on the Defendant.

The 7-Day Quit Notice is Exhibit E. it is accordingly served. See Exhibit E1.

The 7-Day Notice of Owner's Intention to Recover Possession is Exhibit E2 while the Proof of Service of same is Exhibit E3.

The evidence is that the Defendant failed, refused and or neglected to pay or renew his rent. The Defendant had earlier been served with a 90-Day Quit Notice. A copy of the Notice and Red Star Waybill is Exhibits D and D1.

That it will cost ~~N~~5 Million to put the premises and appurtenances in a tenantable condition. I wish to state that the Defendant failed to put evidence on his own side of the scale.

In a civil case, the only way to reach a decision as to which party is entitled to Judgment is by determining on which side

the weight of evidence lay and this could be done by putting the evidence called by either side on an imaginary scale and weighing them together to find out to which side the evidence preponderated.

In the instant case, the Defendant chooses not to put evidence on his own side. See **ALHAJI MOHAMMED BALOGUN vs. UBA LTD (1992) 6 NWLR (PT. 247) 336 at 337.**

Whenever on an issue, evidence comes from one side and is unchallenged and uncontradicted, it ought normally to be accepted on the principle that there is nothing to be put on the other side of the balance unless it is of such quality that no reasonable tribunal should have believed it.

So when evidence goes one way, the onus is discharged on a minimal proof.

I find as a fact from evidence as follows:

- 1) That the Tenancy Agreement, Exhibit A governs the tenancy relationship between the Claimant and the Defendant.
- 2) The tenancy was determined by effluxion of time, nevertheless,
- 3) The Defendant was earlier served with a 90-Day Quit Notice.
- 4) He was also served with a 7-Day Quit Notice.
- 5) A 7-Day Notice of Owner's Intention to Recover Possession.
- 6) The tenancy of the Defendant was determined.
- 7) That the Claimant needs ₦5 Million to put the demised property in tenantable state.
- 8) There is no evidence of payment of professional fees. So prayer (vii) fails.

Consequently, it is my view and I so hold that the Claimant has proved his case so as to be entitled to Judgment.

Judgment is therefore entered in favour of the Claimant against the Defendant as follows:

1. The Defendant, agents, privies, whosoever, shall yield up possession of all that property known as 7-Bedroom Detached Duplex with 3-Room BQ situate at No. 3 Yusuf Bala Street, Asokoro, Abuja forthwith.
2. The Defendant shall pay ₦10,000,000.00 (Ten Million Naira) being arrears of rent from 15<sup>th</sup> August 2015 to 14<sup>th</sup> August 2017, ~~₦~~416,666.7k per month as *mesne* profit from 15<sup>th</sup> August 2017 until possession is given up.
3. ~~₦~~5,000,000.00 (Five Million Naira) as cost of putting the property back into a tenantable condition.
4. ~~₦~~100,000.00 (One Hundred Thousand Naira) as cost of the action.

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**HON. JUSTICE U. P. KEKEMEKE**  
(HON. JUDGE)  
07/07/2022

Parties absent.

Oloruntoba Elisha, Esq. for the Claimant.

**COURT:** Judgment delivered.

(Signed)

**HON. JUDGE**

07/07/2022