

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT MAITAMA – ABUJA**

BEFORE: HIS LORDSHIP HON. JUSTICE S. U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS

COURT NUMBER: HIGH COURT NO. 24

CASE NUMBER: SUIT NO. FCT/HC/CV/1754/2019

DATE: 6/7/2022

BETWEEN:

MRS. ALADI VIVIAN.....PLAINTIFF

AND

MR. KAYODE IYANDA.....DEFENDANT

APPEARANCES:

N.C. Nzagha Esq for the Plaintiff.

Ihioma Ohaka Esq with Nonye Onyezo Esq for the Defendant.

JUDGMENT

This matter was instituted vide Writ of Summons and filed on 29th April, 2019, wherein the Plaintiff claims for the following reliefs against the Defendant as follows:-

- “(1). The sum of N1, 000, 000.00 (One Million Naira only) being the current indebtedness to the Defendant from the 7th of September, 2017.***
- (2). The sum of N41, 700.00 (Forty One Thousand, Seven Hundred Naira only) being mense profit until judgment is delivered and until vacant possession is delivered.***

- (3). The sum of N250, 000.00 (Two hundred and fifty Thousand Naira Only) being the cost of this litigation.**
- (4). The sum of N50, 000.00 (Fifty Thousand Naira Only) as general damages.”**

Upon being served with the Writ of Summons consequent upon an Order of Court for substituted service on the Defendant made on 24th September, 2019, the Defendant sought and obtained leave to enter appearance, and to file and serve his Statement of Defence and Witness Statement on Oath vide Motion No: M/960/2021 filed on 3rd February, 2021, for extension of time as well as a deeming order.

The Plaintiff in this case, testified as Pw1 the sole Plaintiff's witness and adopted the Plaintiff's Witness Statement on Oath. The Plaintiff tendered some documents which were admitted in evidence and marked as follows:-

- “(1). A letter acknowledging debt by the Defendant dated 7th November, 2018 marked as Exhibit A.**
- (2). Notice to pay all outstanding rent at C-Close Pengasson Estate Lokogoma Abuja and to vacate possession within seven days written and signed by E. H. Ugochukwu Esq Solicitors to Landlord dated 22nd November, 2018 marked as Exhibit B.**
- (3). Notice to tenant of owners intension to Apply to Court to recover possession written and signed by E. H. Ugochukwu Esq Solicitors to Landlord also dated 22nd November, 2018 marked Exhibit B1.**
- (4). A Skynet Courier Service Duplicate receipt dated 26th November, 2018, marked as Exhibit B2.**

Despite being duly served with the originating process as well as hearing notice for the day's proceedings, the Defendant was absent and unrepresented.

The Plaintiff in the Plaintiff's Witness Statement on Oath particularly in paragraphs 5 – 15 thereof deposed as follows:-

- “(5). That the Defendant is currently occupying the property situate and known as House 18, C-Close, Pengasson Estate, Lokogoma District, Abuja as a tenant at will.***
- (6). That the tenancy was determined by the effluxion of time on the 7th day of September, 2017.***
- (7). That the Defendant refused to renew the tenancy nor vacate the premises at the determination of the tenancy.***
- (8). That on several occasions the Defendant undertook to pay the outstanding debt but failed.***
- (9). That the Defendant's current indebtedness to the Plaintiff as at September, 7, 2019 is the sum of N1, 000, 000.00 (One Million Naira) only.***
- (10). That the Defendant undertook to make payment on or before the 31st day of December. 2018 and agreed to put it in writing.***
- (11). That surprisingly, the Defendant wrote an undertaken and instead of the agreed December 31st 2018 unilaterally stated February 28, 2019. The undertaking from the Defendant is attached as Exhibit A.***
- (12). That the Plaintiff responded and gave the Defendant seven (7) days to pay the outstanding sum but the Defendant ignored the letter of demand. The letter of demand which was pasted at the premises after the Defendant refused to acknowledge same is attached as Exhibit B.***
- (13). That the letter was served on the Defendant but he refused to acknowledge receipt of same.***
- (14). That our law firm thereafter sent the letter of demand to the Defendant through a Courier Service called United Parcel***

Service (UPS) on the 26th of November, 2018 which the Defendant also refused to acknowledge the receipt of the letter. The express pack of the Courier Service IS HEREBY ATTACHED AS Exhibit C.

(15). That when the Plaintiff briefed our office to recover the above stated debt, our office charged her the sum of N250, 000.00 (Two Hundred and Fifty Thousand Naira) only.”

At the end of examination-in-chief, the suit was adjourned for cross-examination and hearing Notice was issued and served on the Defendant.

The matter came up for cross-examination on the 1st July, 2020 and the Defendant was not in Court nor was he represented. Nevertheless, in the interest of justice, learned Plaintiff 's Counsel who informed the Court that Plaintiff was also absent, applied for another date.

The matter subsequently came up for cross-examination on 13th October, 2020. Still, the Defendant was absent and unrepresented despite being duly served with hearing notice.

Therefore, on the strength of the Plaintiff Counsel's application, Defendant's right to cross-examine the Plaintiff was foreclosed.

The suit was then adjourned for defence. The matter came up for defence on 5th November, 2020. The Defendant was represented by M. S. Hamza Esq who informed the Court that they were just coming into the matter and asked for an adjournment. Court granted the application and adjourned the suit to 22nd January, 2021 for defence.

When the suit came up for defence on 22nd January, 2021, neither the Defendant nor his Counsel was in Court. Learned Plaintiff's Counsel while addressing the Court referred to history of the case on lack of diligence shown in defending the suit. But, in the interest of justice, the Court gave Defendant benefit of the doubt and further adjourned the matter for defence.

On the 4th February, 2021 when the matter came up for defence Dominic Njoku Esq appeared with Nonye Enezo Esq for the Defendant wherein

Defendant's Motion on Notice for extension of time was moved and granted without objection and the matter was further adjourned for defence.

On 16th March, 2021, the matter came up for defence, Plaintiff was absent and unrepresented, but Anozie Obi Esq appeared for the Defendant and applied for another date for defence.

The matter came up again for defence on 7th July, 2021 but the Court further adjourned the suit for defence as Defendant was absent and unrepresented and there was no proof of service in the Court's file.

The matter came up yet again for defence on 8th November, 2021, both parties were unrepresented but learned Defence Counsel Joy Esaba Esq applied again for adjournment for defence.

Although Plaintiff's Counsel had objected to the application, the Court considered a letter for adjournment from lead Defendant's Counsel Anozie Obi Esq who was at the Supreme Court on another matter and further adjourned the matter for defence to 17th January, 2022.

However, on the 17th January, 2022 when the matter came up for defence, the Defendant was absent and unrepresented and upon the strength of Plaintiff Counsel's application, Defendant's right of defence was foreclosed.

Final written addresses were filed, exchanged and adopted on 24th May, 2022.

In the Defendant's final Written Address a sole issue for determination was formulated thus: -

“Whether the Claimant led any evidence in support of her claims in paragraph 14 a – e entitling her to judgment against the Defendant on all the claims itemised therein.”

It is submitted by learned Counsel that a Claimant must lead evidence in support of facts pleaded in her pleadings as any evidence led which does not support the pleadings, go to no issue. Reliance was placed on Sections 133(1) of the Evidence Act, 2011, and the cases of ***ADIMORA & ANOR V ADIMORA & ANOR (2018) LPELR – 43959 (CA); DIKE V***

OKOLOEDO (1999) 10 NWLR (Pt. 623) 359 at 364; MOGAJI V CADBURY (NIG) LTD (1985) 2 NWLR (Pt. 7) 282.

On the Plaintiff's claim in paragraph 14(a) of the Statement of Claim, learned Counsel argued that, did not tender any Tenancy Agreement, that the absence of a Tenancy Agreement in relationship would invariably affect the liabilities if any, of the Defendant to the Plaintiff. Counsel therefore argued that in this case the Plaintiff's claim and witness deposition is to the fact that the Plaintiff is entitled to recovery of possession and no more.

On paragraph 14(B) on Plaintiff's claim for the sum of N1, 000, 000.00 (One Million Naira), it is submitted in that regard that Plaintiff did not mention that amount in her evidence but only mentioned N500, 000.00 (Five Hundred Thousand Naira) in paragraph 12 of her Further Witness Statement on Oath.

Learned Counsel therefore submits that on the claim of One Million, Five Hundred Thousand Naira in paragraph 8 of the Statement of Claim, no evidence was led in support of the claim hence Plaintiff is deemed to have abandoned the claim. Reliance was placed in **ADIMORA & ANOR supra**. On the claim for the sum of N41, 700.00 (Forty One Thousand, Seven Hundred Naira) being mense profit, it is submitted that the claim was not mentioned in Plaintiff's Further Witness Statement on Oath and the Claimant did not demonstrate how she became entitled to same. Counsel submitted therefore that the claim must fail.

Reliance was placed on the cases of **A.P. LTD V OWODUNMI (1991) LPELR-213 (SC); MOGAJI V CADBURY (NIG) LTD (supra)**.

On the claim for the sum of N250, 000.00 (Two Hundred and Fifty Thousand Naira) only being cost of litigation claimed in Plaintiff's paragraph 14(D), learned Counsel submitted that Claimant did not make reference to this claim in the Witness Statement on Oath, consequently therefore, the claim must fail.

Counsel relied on the case of **MISS. FUNMILAYO ROFOLA AYODELE WILLIAMS V GLAXO SMITHLINE CONSUMER NIGERIA PLC (2019) LPELR- CA/L/996/2008**.

On paragraph 14(3), on the sum of N50, 000.00 (Fifty Thousand Naira) only as general damages, it is submitted that the Claimant led no evidence in support of her claim for general damages since it is trite that a Plaintiff must succeed on the strength of the case presented and not on the weakness of the Defendant's case. Reliance was placed on the cases of **BADEJO V FEDERAL MINISTRY OF EDUCATION (1996) 8 NWLR (Pt.1464) 15; ALAO V AKANO (2005) ALL FWLR (Pt.264) 799; NDAKAYO V DANTORO (2004) 13 NWLR (Pt.889) 137 @ 124.**

Learned Counsel further submitted that it is trite law that evidence must be led to matters pleaded. Reliance was placed on the cases of **MUSMDRACK CONTRACTS LTD & ORS V WEMA SECURITIES & FINANCE PLC (2018) LPELR – 45279 (CA); FCDA V ALHAJI MUSA MAJBI (1990) 3 NWLR (Pt. 138) 27 @ 281 A – G, per Nnamani JSC.**

It is further argued that the Court is not a father Christmas and cannot give damages in support of what was not been proved by evidence. Reliance was placed in the cases of **A G KWARA STATE & ORS V NATIONAL JUDICIAL COUNCIL & ANOR (2010) LPELR-5009 (CA); EKPENYONG V NYONG (1975) 6 NSCC at 3233 Paras 50 – 79; ADO IBRAHIM & CO LTD V BCC LTD (2007) 15 NWLR (Pt. 1058) 538; NIGERIA DEVELOPMENT & HOUSING SOCIETY LTD V MUMUNI (1977) 2 SC, 57; UNION BEVERAGES V OWOLABI (1988) 2 NWLR (Pt. 68) 128; MAKANJUOLA V BALOGUN (1989) 3 NWLR (Pt. 108) 192; OKORUNFUNMI V IGE (1993) 8 NWLR (PT. 311) 257.**

Finally, learned Counsel urged the Court to dismiss the Plaintiff's claims in One Million Naira, mesne profit of N41, 700.00 and N50, 000.00 general damages.

Meanwhile, in the Plaintiff's final written address a sole issue for determination was equally formulated to wit:-

“Whether considering the evidence before Court, the Plaintiff is entitled to the reliefs sought.”

Learned Counsel submitted that the Plaintiff in this case has proved her claims in accordance with the standard required by law and is entitled to all the reliefs sought in this case.

That it is indisputable in this case that the Defendant is still in possession of the demised premises, and that he is in arrears of the rent in respect of the demised premises. Reference was made to paragraphs 6 to 15 of the testimony of Pw1. That the Defendant did not dispute this fact and he did not lead any evidence to the contrary, this is despite the service of statutory notices to quit and deliver possession.

Counsel submitted that the law is that unchallenged evidence needs no further proof. Reliance was placed on the cases of ***IFEANYI V CHUKWU OSUNDU CO LTD V AKHIGBE (1991) 11 NWLR (Pt.625) 1 at 4, ratio 3; OJO V ANIBERE (1991) 11 NWLR (Pt.628) 360 @ 632, ratio 2.***

On the effect of unchallenged evidence and duty of the Court in that regard as in this case, reliance was placed on the case of ***MIRCHANDANI V PINHEIRO (2001) 3 NWLR (Pt.69) Page 573, Para G –H.***

Submitted moreso that in the instant case the Defendant was served with the processes of this Court and represented in Court, yet he failed to lead any evidence to challenge the case of the Plaintiff. And urged the Court to find that the Plaintiff has proved her case on the preponderance of evidence and grant the reliefs sought.

Having considered the issues canvassed, I shall raise a sole issue to wit:-

“Whether the Plaintiff has proved her case on the preponderance of evidence to be entitled to the reliefs sought.”

It is trite that the burden of proof in civil cases is on the Plaintiff to prove what he asserts whereas the proof or rebuttal of issues which arises in the course of proceedings may shift from the Plaintiff to the Defendant and vice-versa.

See: ***EKWEOZOR & ORS V REGISTERED TRUSTEES OF THE SAVIOUR’S APOSTOLIC CHURCH OF NIG (2020) LPELR – 49568 (SC); OMAGBEMI V FRN (2021) LPELR-54155 (CA).***

Similarly, where one of the parties in a suit fails or refuses to adduce evidence in proof of any of the issues raised in the pleadings filed in a suit, the trial Court is bound to resolve that issue or issues against the defaulting party, unless there are some legal reasons dictating the contrary. Please

see ***SHELL PETROLEUM DEV. CO OF NIG. LTD V SIBEATE KANGI & ORS SUIT NO. CA/PH/272/2009.***

It should be noted that the matter under consideration is a tenancy matter, the Defendant who is in occupation of Plaintiff's premises was duly served with the Writ of Summons and other Court processes but neglected and or refused to defend this action.

Meanwhile, according to the Plaintiff in her Witness Statement on Oath avers that the tenancy was determined by effluxion of time on the 7th day of September, 2017.

It is further the case of the Plaintiff that the Defendant who is now a tenant at will, refused to renew the tenancy nor vacate the premises.

That despite making undertakings to pay the current indebtedness to the Plaintiff to the tune of One Million Naira as at September, 2019, and agreed to put it in writing (as seen in exhibit A, annexed by Plaintiff) and despite the letters of Demand/Notices (i.e Exhibits B and B1) the Defendant refused to acknowledge the said letters of demand, hence the claims of the Plaintiff.

I equally refer to Exhibit A which is a written undertaking written by the Defendant in respect of the outstanding rent at 18, C-Close, Pengasson 1 Estate, Lokogoma, Abuja dated 7th November, 2018.

In this case having carefully analysed the evidence led by the Plaintiff including the documentary evidence, it is clear that since the tenancy is determined by the effluxion of time, the Defendant is now a tenant at sutterance whose tenancy can be determined by 7 days notice.

As shown in Exhibits B and B1, the statutory notices were duly served on the Defendant in this case.

In addition, in a recent Court of Appeal decision, the Court held that service of a Writ of Summons on a tenant constitutes adequate notice. See the case of ***BANKOLE & ANOR V OLADITAN (2022) LPELR-56502 (CA).***

Therefore, in effect the Plaintiff in this case has clearly made out a case against the Defendant since her evidence is unchallenged and uncontroverted; and is therefore deemed admitted.

Please see the case of ***OKOEBOR V POLICE COUNCIL & ORS (2003) 5 SC 11***, where it was held that where a Defendant fails to file a defence, he will be deemed to have admitted the claim or relief in a statement of claim.

In this case although the Defendant has filed a Statement of Defence, same was not adopted. Therefore, it is deemed to be a worthless piece of paper. On this premise, I refer to the case of ***MAFEKODUNMI & ORS V OGUNSEYE (2017) LPELR-42547 (CA), per Tsammani, J.C.A, (PP. 40 – 45) Paras D – C***, where the Court held, ***where a deponent to a Witness Statement on Oath fails to adopt it, same is deemed abandoned and therefore cannot be examined by the trial Judge.***

Now while I've considered the arguments canvassed for the Defendant in the final Written Address, the law is trite that address of Counsel no matter how brilliant cannot take the place of evidence.

See ***NIGER CONSTRUCTION LTD V OKUG BENI (1987) LPELR- 1993 (SC) per Oputa, JSC (of blessed memory) P. 7, paras B – C***, where the Court held as follows:-

“Cases are not normally decided on addresses but on credible evidence. No amount of brilliance in a final speech can make up for the lack of evidence to prove and establish or else disprove, and demolish points in issue”

moreso, it is trite that where evidence given by a party to a proceeding was not challenged by the other side (such as in this case) who had the opportunity to do so, it is always open to the Court seized of the matter to act on such unchallenged evidence before it. I refer to the cases of ***ASAFA FOODS FACTORY LTD VS AIRLINE NIG LTD & ANOR (2002) SC (Pt.1) 1. Per IGUH, JSC P. 29, Paras B – D***, where the Court held inter alia:-

“In the absence of the Defendants in the present case adducing any evidence whatsoever, their own side of the imaginary scale remained weightless and unable to tilt the proverbial scale

which clearly was heavily laden in one direction, to wit, on the side of the Plaintiff. The onus of proof in such a case by a Plaintiff is discharged quite easily on minimal proof. See BROAD LINE ENTERPRISES LTD V MONETARY MARITIME CORPORATION AND ANOTHER (1995) NWLR (Pt. 417)1 at 27; NWABUOKU V OTTIH (1961) 2 SCNLR 232; BALOGUN V UBA LTD (1992) 6 NWLR (Pt.247) 36 at 354.

I am therefore satisfied from the evidence adduced that the Plaintiff is entitled to the 1st relief of N1, 000, 000.00. I so hold.

On relief 2, being claim for mesne profit in the sum of N41, 700.00 until judgment is delivered and until vacant possession is delivered.

The expression mesne profit is used to describe the sum due to a Landlord from the time his tenant ceases to hold the premises as tenant to the time such tenant gives up possession. Mesne profits are the facts and profits which a trespasser has, or might have received or made during his occupation of the demised premises, and which therefore, he must pay over to the true owner as compensation for which he has committed.

See: ***DOHERTY & ANOR V SUNMONU & ORS (2018) LPELR-46725 (CA); ABEKE V ODUNSI & ANOR (2013) LPELR-20640 (SC); A.P LTD V OWODUNNI (1991) LPELR-213 (SC); IDAM V NLPC PENSION FUND ADMINISTRATORS & ANOR (2021) LPELR – 53400 (CA).***

Therefore, in this case, it is my view that this arm of the relief sought ought to be granted. I so hold.

I have observed that the claim for general damages was not specifically pleaded nor proved by the Plaintiff. Therefore, the Court cannot grant what was not asked for. However, on relief no. 3, which is cost of the litigation, it is a fact which the Court can exercise its discretion in granting it as an equitable remedy since no doubt the Plaintiff has incurred expenses in prosecuting this suit.

Therefore, on the whole I am satisfied that the Plaintiff has proved her case to be entitled to the grant of reliefs 1, 2 and 3. Relief no. 4 fails and it is hereby dismissed.

Consequently, judgment is hereby entered in favour of the Plaintiff against the Defendant as per the claims in reliefs 1, 2 and 3 as endorsed on the Writ of Summons.

Signed:

***Hon. Justice S. U. Bature
6/7/2022.***