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

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

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| **COURT CLERKS:** | **JAMILA OMEKE & ORS** |
| **COURT NUMBER:** | **HIGH COURT NO. 24** |
| **CASE NUMBER:** | **SUIT NO. FCT/HC/CV/1687/2019** |
| **DATE:** | **6TH JULY, 2022** |

**BETWEEN:**

MRS. ENO EKPO.....CLAIMANT

**AND**

DR. CHRIS ONUS.....DEFENDANT

**APPEARANCES:**
Dr. Cletus Ukpong Esq for the Claimant.

Defendant is absent and unrepresented.

## JUDGMENT

By a Writ of Summons dated 23rd day of April, 2019, and filed on the 23rd day of April, 2019; the Claimant herein claims against the Defendant as follows:-

> ***"(1). The Plaintiff claims a declaration that the Defendant cannot use self-help or undue influence to force her out as a tenant from the premises of Lounge De Royale, Plot 965 Aminu Kano Crescent, Wuse 2, Abuja and without due process of law.***

***(2). The Plaintiff claims a declaration that the visits the Defendant made to the premises of Lounge De Royale, Plot 965 Aminu Kano Crescent, Wuse 2, Abuja on the 6th day of February, 2019 together with unknown people and Policemen, soldiers with guns to intimidate and force the Plaintiff to sign an agreement written by the Policemen to vacate the premises was an act of trespass to the Plaintiff's property.***

***(3). N10, 000, 000.00 (Ten Million Naira) general damages for trespass committed on the said premises on the 6th day of February, 2019 when the Defendant with unknown people and Policemen broke into the premise of Meantime Lounge, Plot 965 Aminu Kano Crescent, Wuse II, Abuja***

***(4). N500, 000.00 special damages for economic loss as the result of trespass.***

***(5). N200, 000.00 as the cost of this litigation.***

***(6). An Injunction against the Defendant, his servants, privies and agents from further trespass upon the said premises, Lounge De Royale, Plot 965 Aminu Kano Crescent, Wuse 2, Abuja or in any way interfering with the Plaintiff's possession of the said premises."***

Upon being served with the originating process, the Defendant entered appearance and filed his Statement of Defence as well as a Witness Statement on Oath.

However, via a Motion on Notice dated 30th January, 2020 and filed on 30th January, 2020, the Defendant sought and obtained leave to amend his Statement of Defence and equally filed a Witness Statement on Oath. Both processes were filed on 10th March 2021, wherein Defendant Counter Claims against the Claimant.

In response, the Claimant filed a Reply to the amended Statement of Defence as well as Witness Further Statement on Oath in reply to amended Statement of Defence.

At trial, the Claimant testified as Cw1 and equally called two witnesses namely Cw2 and Cw3.

The witnesses were duly cross-examined and the Claimant closed her case on 27th May, 2021.

The Defendant opened his case on 1st day of July 2021 and called one witness Dw1, Ehizojie Isaac Oseremen who adopted Witness Statement on Oath and the matter was adjourned for cross-examination of Dw1 against 18th day of October, 2021.

On failure of the Defendant to appear for cross-examination, and without any correspondence to the Court in that regard, and on the strength of Claimant Counsel's application, cross-examination of Dw1 was foreclosed.

The Court further adjourned to 13th December, 2021 for continuation of defence.

However, on the adjourned date fixed for continuation of defence, neither the Defendant nor his Counsel was in Court and there was no correspondence to the Court regarding their absence, even though hearing notice was duly served in that regard. On learned Counsel's application, the Court foreclosed Defendant's defence same day.

The Claimant filed and served Claimant's final Written Address which was adopted on 23rd May, 2021. The Defendant did not file any Written Address despite being duly served with hearing notice for the day's proceedings.

Meanwhile, in Claimant's final Written Address, Dr. Celcius Ukpong Esq, Claimant's Counsel, formulated two issues for determination to wit:-

> ***"(1). Whether the unsolicited visit made by the Defendant to the premises of the Claimant at Lounge De Royale, Plot 965, Aminu Kano Crescent Wuse 2, Abuja on the 6th day of February 2019, together with unknown people, policemen and, soldiers with guns to intimidate and force the Plaintiff to sign an agreement to vacate the premises amounted to trespass to the property, the Claimant was in possession."***

***(2). Whether the Claimant is entitled to the reliefs sought before this Honourable Court in this matter."***

On issue one, learned Counsel submitted that the actions of the Defendant in unsolicited visit with unknown people, policemen and soldiers with guns to intimidate and force the Claimant to sign an agreement to vacate the premises amounted to trespass to the property the Claimant was in possession.

It is submitted therefore, that Claimant's privacy was invaded by the Defendant who resorted to self-help which Courts have condemned. That in the instant case Defendant's action amounts to trespass.

Reliance was placed on the cases of ***OJUKWU V GOTV. OF LAGOS STATE (1986) 3 NWLR (Pt. 26) 39 (sc); OKONKWO V OGBOGU (1996) 5 NWLR (Pt. 449) 420 (SC).***

Reliance was equally placed on paragraphs 7 and 8 of the Statement of Claim as well as the evidence of Cw1 and Exhibit PLF1.

Submitted moreso, that the law of trespass protects privacy and possession and not ownership. That trespass is a violation of possessory right, therefore a tenant, as in the instant case, can maintain an action in trespass against a landlord.

Counsel referred to a textbook by Prof. Emeka Chianu on law of Landlord and Tenant, 2004, reprint at pages 56, 68 and the cases of ***ELOCHIN (NIG) LTD V MBADIWE (1986) (Pt. 14) 47; UDE V NWARA (1993) 2 NSCQR (Pt.11) 780 LPELR-346 (SC); UBN PLC V AJABULE (2011) LPELR – 8239 (SC); ISEGBA & ANOR V REGISTERED TRUSTEES OF MISSION HOUSE & ANOR (2018) LPELR – 44242 (CA).***

Learned Counsel urged the Court to resolve issue 1 in favour of the Claimant.

On issue two, learned Counsel submitted that civil causes are fought and won on the preponderance of evidence. That the burden of proving a particular fact is on the party who asserts it. That this onus, however does not remain static. It oscillates from side to side where necessarily and the onus of adducing further evidence is on the person who will fail if such evidence was not adduced. Reliance was placed on the case of ***UNION***

***BANK OF NIGERIA LIMITED V PROF. A. O. OZEGE (1984) 3 NWLR (Pt. 333) 385 ratio 8.***

It is argued therefore that from the evidence led and from paragraphs 7, 8, 9 and 10 of the Statement of Claim and paragraphs 10, 11 and 13 of the Witness Statement on Oath and the evidence of CW1, Claimant has proved she was in possession of the property in question on the day of the alleged trespass on 6th February. 2019. Reliance was also placed on the evidence of CW2 and CW3.

Learned Counsel further submitted that the burden had clearly shifted on the Defendant to rebut during the course of trial. But, that the Defendant merely denied the assertion made in paragraph 4 of the Statement of Claim and put the Claimant on strictest proof. That the said denial in law is not sufficient traverse of the averment in the said paragraphs since it is an insufficient denial. Reliance was placed on the cases of ***JACASSON ENGINEERING LIMITED V UBA LIMITED (1993) 3 NWLR (Pt.283) 586; DIKWA V MODU (1993) 3 NWLR (Pt. 280) 170.***

Submitted moreso, that the Defendant did not deny that he crossed the boundary of the Claimant in trespass on the said 6th February 2019 but only attempted to justify it by saying that they were on a mission to get an agreement from the Claimant to pack out of the premises. Reference was made to paragraph 4b of the Amended Statement of Defence.

Submitted in that regard that the crossing of the Claimant's boundary to extract an agreement constitutes trespass, and urged the Court to so hold.

It is further argued that DW1's testimony is very unhelpful to the Defendant, as Dw1 ran away from the crucible of cross-examination. The Court is therefore urged to give less weight to it. Reliance was equally placed on the case of ***MAFIDOH OKOWA VS IYEREBOR & ANOR (1969) 1 ALL NLR 84.***

Submitted further that the absence of DW1 for cross-examination deprived the Claimant to the right to question DW1's accuracy, veracity or credibility, and has deprived the Claimant of the opportunity to discover who he is in life. Reliance was placed on Section 200 of the Evidence Act.

Reference was equally made to the reply to the Amended Statement of Defence and paragraph 2 of the Further Statement on Oath, to argue that it

was necessary to cross-examine DW1 on the Power of Attorney he is relying on.

Submitted further that the said Power of Attorney i.e Exhibit A was not even endorsed by the witness therefore rendering it completely incompetent and an unreliable document before this Honourable Court.

On the issue of Counter Claim, learned Counsel submitted that the Defendant totally failed to prove it and urged the Court to dismiss it, as an abuse of Court process and at calculated attempt to delay the judicious time of the Court.

On the allegation by the Defendant in paragraphs 5 and 6 of Defendant's Witness Statement on Oath on a tenancy agreement between parties, learned Counsel argued that no document on the agreement was produced in spite of the notice filed on the 7th June, 2021 and served on the Defendant two weeks before the testimony.

Reliance was also placed on paragraph 7 of Claimant's Witness Further Statement on Oath in reply to the amended statement of defence.

On the Counter Claim for recovery of premises, it is submitted, that the Defendant could not prove that he has complied with statutory requirements to obtain recovery of his premises, as it were. That Exhibits B1, B2 and B3 are unhelpful as all of them were procured about three months into the commencement of this matter on the 27th day of April, 2019. That this procurement after the commencement of the trial rendered the said Exhibits weightless apart from the fact that the witness could not stand the crucible of cross-examination on the claim.

Learned Counsel consequently, argued that without adequate statutory notices to quit the premises, the Honourable Court lacks the jurisdiction on the issue of recovery of premises and urged the Court too grant all the claims of the Claimant and to dismiss the Counter Claim.

Finally, learned Counsel urged the Court to hold in favour of the Claimant. I shall also adopt the issues raised in the Claimant's address.

Now, Section 133(1) of the Evidence Act, 2011, provides thus:

***"In civil cases the burden of first proving existence or non-existence of a fact lies on the party against whom the judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings."***

The brief facts of this case as distilled from the Statement of Claim as well as Claimant's Witness Statement on Oath is that the Claimant is a yearly tenant of the Defendant for about four years and in possession of the premises known as Lounge De Royale at Plot 965 Aminu Kano Crescent, Wuse 2 Abuja. Claimant in her evidence on oath averred that she has been paying her rent without reasonable failure while the Defendant has been in the habit of harassing her without any reasonable cause.

According to CW1, the Defendant asked her to vacate the premises for another tenant willing to pay a higher rent while her rent was still subsisting and without any statutory quit notices as a yearly tenant.

That on 6th December, 2019 the Defendant with unknown people including Police and soldiers broke into the premises of Lounge De Royale at about 2:00 am to harass her with threat to forcefully eject her from the premises she was in possession.

According to the witness, then Policemen that came with the Defendant forced her to write Exhibit PLF under duress and for the fear of her safety.

Claimant said as a result of that she suffered emotional shock, economic loss as a result of the stampede and consequent flight of customers, and made her incur daily loss of N100, 000.00 for about five days calculated at N500, 000.00.

CW2 testified that she witnessed the said invasion, the intimidation and harassment by the Defendant and the men who accompanied him on the fateful day and the fact that CW1 was forced to write the said written agreement to vacate the premises.

Likewise, CW3 a regular customer of the CW1 the Claimant also testified that he witnessed the said incident and as the armed men were fidding with their guns, he and some other customers scampered for fear of their lives that were threatened.

Therefore, Claimant herein seeks among other things, a declaration that the said conduct of the Defendant amounts to trespass and use of self help.

Now, on whether a tenant can maintain an action in trespass against the landlord, the Court of Appeal held in the case of ***OKAFOR V LENUNA CONSTRUCTION CO. LTD & ANOR (2018) LPELR – 46007*** as follows:-

> ***"...A landlord has not the right to invade premises in the occupation of a tenant and cast his goods and belongings away even for safe-keeping without his consent. Whereas in the present case, a landlord unilaterally enters into the premises of his tenant and takes possession of the property or goods of the tenant; he has committed an act of trespass. In the case of NATIONAL SALT COMPANY OF NIGERIA LTD V INNIS-PALMER (1992) 1 NWLR (Pt. 218) 422 at 436, it was held that everybody is forbidden to take possession or repossession of a premises by self-help, force, strong hand or with a multitude of people. Similarly, anyone entitled to possession or repossession of premises can only do so by due process of law. Thus, no one must take law into his hands and everyone must apply to the Court for possession and act on the authority of the Court. The appellant was rightly held liable to the 2nd Respondent in trespass." Per Shuaibu, JCA at PP 16 – 17 paras B – C.***

In this case, the Claimant has shown in her evidence before the Court that the Defendant trespassed on the property in question which was then in her possession, and resorted to self-help. Worse still, according to the Claimant, the Policeman who accompanied the Defendant forced her to sign an undertaken to pack out of the premises by force which she said she did on fear of her own safety.

Under cross-examination when she was asked if her assertion was true. CW1 replied thus:-

> ***"Yes very true (in capital letters)"***

She further maintained that it was the Defendant himself who made her to write the undertaking aided by his men. She also stated that there were many people there at the time in question.

CW2, also supported the evidence of the Claimant and stated under cross examination that the incident had indeed occurred and it happened at an ungodly hour. She also stated that when the Police and Soldiers broke into the premises, she was there, the staff and a few customers but some fled away due to fear of what might happen next.

On the assertion by learned Defendant's Counsel that the men were not armed during the incident, CW2 said.

***"They were"***

CW3 under cross-examination, was unshaken as she maintained that the incident happened in her presence, thus supporting the evidence of CW1 and CW2.

I have also studied Exhibits B1, B2 and B3 which include two statutory notices said to have been served on the Claimant exhibited by the Defendant.

However, I have considered the submissions of learned Claimant's Counsel in the address that the said statutory notices are unhelpful to the Defendant herein since they were procured 3 monthly into the commencement of this matter.

As stated earlier, this suit was filed on 23rd April, 2019 while one of the statutory notices i.e notice to quit Exhibit B1 is dated 31st July 2019 while Exhibit B2 Notice to Defendant of Owners Intension to apply to recover possession is dated 16th day of August, 2019, showing that the processes were issued months after the alleged trespass.

In addition, I've considered the fact that the Claimant was forced to sign the undertaking and it appears that from the facts presented by the Claimant, the Defendant resorted to self-help since there's nothing to show that the act of the Defendant was in accordance with the law. I so hold.

On the implication of resorting to self-help, I too commend the decision of the Court of Appeal in the case of ***ISEGA & ANOR V REGISTERED TRUSTREES OF MISSION HOUSE & ANOR (supra)*** cited by learned Counsel to the Claimant.

Likewise, in the case of ***AKINKUGBE V EWULUM HOLDINGS (NIG) LTD & ANOR (2008) LPELR-346,*** the Supreme Court held:

> ***"A Landlord who resorts to self-help in a bid to recover possession of the premises tenanted to him runs foul of the law and he is liable in damages...." per Aderemi, JSC at PP.22 – 23, Paras F –A.***

At this juncture, it is noteworthy to point out that although the Defendant has filed an amended Statement of Defence and adopted the Defendant's Witness Statement on Oath, the Defendant's witness Dw1, did not make himself available for cross-examination, despite being given the opportunity of appearing for the cross-examination.

The implication of that is that the Defendant's Amended Witness Statement on Oath stands in jeopardy of being rejected.

On this premise, I refer to the case of ***RE:BAKARE (1969) LPELR-25543 (SC)*** where the Court held:-

> ***"If leave to cross-examine a Deponent to an Affidavit is granted and the Deponent fails to appear as we point out before, his Affidavit must be rejected."***

Therefore in this case, I would have to agree with learned Claimant's Counsel on this issue that the absence of Dw1 for cross-examination deprived the Claimant of the right to question the accuracy, veracity and credibility of Dw1, even in the face of Exhibit A, which is the Power of Attorney of Dr. Chris Onu donated to Ehizojie Isaac Oseremen Dw1.

I've also considered Claimant's averments in paragraph 2 of her Further Statement on Oath where it was contended that Dw1 Mr. Ehizojie Isaac Oseremen was not present with the Defendant at the wrongful mission of 6th February, 2019 at the premises in question. Further argued in that regard is that Dw1 Mr. Ehizojie Isaac Oseremen never presented to the Claimant any Power of Attorney as Dr. Chris Onu.

All these facts require rebuttal by the Defendant since the onus clearly shifted on the Defendant in light of the evidence adduced by the Claimant.

However, in this case, since Dw1 was not cross-examined, for the most part, the evidence of the Claimant is deemed as unchallenged/uncontroverted and deemed admitted. See ***OKOEBOR V POLICE COUNCIL & ORS (2003) 5 SC, 11.***

In the instant case, there's no doubt that the Claimant is entitled to reliefs 1, 2, 3 and 5 as endorsed on the face of the Writ.

On the claim for special damages, the Claimant has specifically pleaded same in paragraphs 11, 13 and 14 of her Statement of Claim, and proved same in paragraphs 13 -16 of her Witness Statement on Oath sworn to on 23rd April, 2019 that sequel to the trespass she has suffered economic loss and emotional trauma on the fateful day due to the flight of her customers and therefore claims special damages.

Therefore, it is my considered view that the Claimant is entitled to the award of special damages i.e Relief No. 4. See **OGUNTADE & ANOR V VOGUN (2021)LCN (154191) (CA); GEK INV. NIG. LTD. V NIGERIAN TELECOMMUNICATIONS PLC (2009) 15 NWLR (PT. 1164) 344 @ 371-372 paras G-G.**

However, on the last relief which is an injunctive relief, the Court has observed that Exhibits B1 and B2 are the certified true copies of the statutory notices served on the Claimant by the Defendant after the incident of 6th February, 2019, therefore, this Court cannot shut its eyes to this fact which is undisputed. The law allows a landlord to serve the necessary statutory notices and to take possession of his property/premises provided it is in a manner prescribed by law. Therefore, in my considered view, it would not be fair to grant relief no. 6 restraining the landlord in this case the Defendant from recovering the demised premises in accordance with the procedure laid down by law. By her own admission CW1 has stated that she's still in possession of the premises.

Therefore, without further ado, I hold that this relief fails and cannot be granted in the interest of justice.

On the whole, I find that the Claimant has proved her case to be entitled to reliefs 1, 2, 3, 4 and 5 based on the preponderance of evidence. I so hold.

The 2nd issue is accordingly resolved in her favour.

On the Defendant's Counter Claim, I agree with learned Claimant's Counsel that in this case Dw1 could not stand the crucible of cross-examination on the claims. Likewise Defendant having failed to prove his Counter Claim the Court lacks jurisdiction to adjudicate on the issue of recovery of premises.

Therefore, I find that the Defendant has not proved his Counter Claim and it is hereby refused and dismissed.

Consequently and without further ado, Judgment is hereby entered in favour of the Claimant against the Defendant. The Court hereby orders as follows: -

(1). It is hereby declared that the use of self-help and undue influence by the Defendant on the 6th day of February, 2019, to force the Claimant out as a tenant from the premises of Lounge De Royale, Plot 965 Aminu Kano Crescent, Wuse 2, Abuja together with unknown people and Policemen, soldiers with guns to intimidate and force the Claimant to sign an agreement written by the Policeman to vacate the premises was an act of trespass on the Claimant who was in possession.

2. **Two Million Naira (N2, 000, 000.00)** general damages is awarded for the trespass committed on the 6th February, 2019 at Meantime Lounge, Plot 965 Aminu Kano Crescent, Wuse 2, Abuja.

3. **N500, 000.00 (Five Hundred Thousand Naira)** special damages is awarded for economic loss and emotional trauma caused to the Claimant as a result of the trespass and self help of the Defendant and his agents and privies.

4. **N200, 000.00 (Two Hundred Thousand Naira)** is awarded as cost of this litigation.

5. Relief no. 6 fails. It is refused and accordingly dismissed.

***Signed:***

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