

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

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT:28

DATE: 24TH OCTOBER, 2022

FCT/HC/CV/535/2021

BETWEEN

**GUKANI Limited-----
(Suing through his Lawful Attorney,
Mrs. Nyakno Essien Iton)**

CLAIMANT

AND

MR. OFODILE IZUCHUKWU -----

DEFENDANT

JUDGMENT

The Claimant by a Writ of Summons dated and filed on the 23rd of February, 2021, brought this action against the Defendants, praying this Honourable Court for the following reliefs:-

1. An Order of this Honourable Court directing the Defendant to vacate and deliver vacant possession of the apartment known as Block 19, Flat 1, Short-put close, off 2nd Avenue, Zone 3, Games Village, Abuja, FCT to the Claimant.
2. An Order of this Honourable Court directing the Defendant to pay to the Claimant the sum of ₦11,375,000.00 (Eleven Million,

Three Hundred and Seventy-Five Thousand Naira) only being the rent arrears.

3. An Order of this Honourable Court directing the Defendant to pay to the Claimant the sum of ₦191,666.00 (One Hundred and Ninety-One Thousand, Six Hundred and Sixty-Six Naira) per month from the 15th day of January 2021 until the Defendant vacates and delivers vacant possession of the said apartment to the Claimant.
4. An Order directing the Defendant to pay the sum of ₦1,500,000.00 (One Million, Five Hundred Thousand Naira) only being the cost incurred by the Claimant for engaging the services of Messrs Mill Hill Attorneys & Solicitors to recover possession and the amounts due and unpaid by the Defendant.
5. An Order of this Honourable Court directing the Defendant to pay 10% interest on the Judgment sum until the Judgment debt is fully liquidated.
6. General damages in the sum of N10,000,000.00 (Ten Million Naira) only.

The claim of the Claimant as per its statement of claim is that they granted to the Defendant a tenancy over its property at Block 19, Flat 1, Shot Put Close, Off 2nd Avenue, Zone 3, Games Village, Abuja for use for a period of two(2) years with an option to renew with effect from October 20, 2012 to 19th October, 2014 on a yearly rent of ₦2,300,000.00 (Two Million, Three Hundred Thousand Naira) only but yielding and paying cumulatively for

two years the sum of ₦4,600,000.00 (Four Million, Six Hundred Thousand Naira) only.

The Claimant averred that the Defendant for his rental year commencing 20th October 2014 to October 19, 2015, paid ₦2,000,000.00 (Two Million Naira) only, contrary to his rent of ₦2,300,000.00 thereby having an outstanding balance of ₦300,000.00 (Three Hundred Thousand Naira) only.

The Claimant stated that the Defendant for the period commencing 20th October 2015 to 19th October 2016, paid the sum of ₦1,000,000.00 (One Million Naira) only thereby having an outstanding balance of ₦1,300,000.00 (One Million, Three Hundred Thousand Naira) only of unpaid rent for the rental year.

The Claimant averred that the Defendant failed to pay any amount of money for the rental year commencing 20th October 2016 to 19th October, 2017, thereby accumulating a rental debt/arrears of rent of ₦2,300,000.00 (Two Million, Three Hundred Thousand Naira) only for the period 2016 to 2017.

The Defendant also failed to pay any amount of money for the rental years commencing 20th October 2017 through 19th October, 2020.

The Claimant averred that by a Notice to quit/demand letter dated 28th February 2015, her lawful Attorney demanded from the Defendant, the outstanding balance/rent arrears within 21 days and or for him to surrender the keys of the apartment. The

Claimant states that despite repeated demands, the Defendant remained in possession without paying any rent or rent arrears.

The Claimant averred that upon refusal of the Defendant to clear the outstanding rent arrears, the Claimant caused a 7days' Notice of Landlord intention to apply to Court to recover possession to be issued and served on the Defendant and upon the service of the above, the Defendant still refused to give up possession of the premises despite repeated demands and the Defendant's assurances he would give up possession of the said premises.

The Claimant averred that the Defendant persistent refusal to clear the outstanding rent and yield vacant possession to the Landlord have caused irreparable loss on interest it would have earned had the rent been paid and the money deposited in an interest yielding account. That despite the said notices and various demand letters, the Defendant has failed to deliver possession and clear the rent arrears and continues to make financial gains from the premises.

At the hearing of the case, the Claimant adopted her witness statement on oath as she testified as Pw1, thereby affirming the averments in the Statement of Claim. She also tendered the following documents in evidence:-

1. Power of Attorney to Essien Nyakno Iton – Exhibit 1
2. Tenancy Agreement of 2012 – Exhibit 2
3. Notice to Quit/Demand Letter 28th February, 2015 – Exhibit 3

4. 6 Month Notice to Quit 4th March, 2018 – Exhibit 4
5. 7 Days Landlord intention to apply to Court to Recover Possession 4th October, 2018 – Exhibit 5
6. Demand Letter of 21st July,2020 – Exhibit 6
7. Receipt from Courier Service – Exhibit 7
8. Receipt of Mill Hill for the Suit – Exhibit 8
9. Demand Notice to the Defendant dated 15th July,2020 – Exhibit 9

The Defendant through substituted means of service vide an Order of this Honourable Court was duly served with the processes in this suit as well as hearing notices. The Defendant failed to either enter appearance to the suit or to defend same. Consequently, their right to so defend the suit was on the Claimant's application foreclosed. The Claimant filed and adopted his final written address wherein her learned counsel raised a sole issue for determination, to wit:

"Whether based on the preponderance of evidence, the Claimant have discharged the onus on them and proved their case to be entitled the award of the claims claimed as per their writ of summons and statement of claim?"

Proffering arguments on the issue so raised, learned Counsel contended that the pleading and evidence as presented by the Claimant before this Court, have not been challenged by the Defendant even though the Defendant was put on notice of every proceedings of this Court. Learned Counsel posited that it is trite law that where evidence is unchallenged and uncontroverted, the Court is obliged to accept it as the truth. Counsel referred this Court to the case of ***C.B.N V IGWILLO 2007 14 NWLR (PT 1054) 393 @ PAGE. 435.***

Learned Counsel to the Claimant prayed this Honourable Court to enter Judgment as per its Statement of Claim and resolve the sole issue raised in its written address in favour of the Claimant on the grounds that the Claimant has discharged the evidential burden of proof to be entitled to the reliefs sought in this suit against the Defendant.

In the determination of this suit, the issue for consideration is; ***“Whether the Claimant has established its case as to be entitled to its claims before this Court?”***

The law is settled that a Claimant must discharge the onus of proving his case with credible evidence before he can be entitled to his claims. In ***AYENI V ADESINA (2007) 7 NWLR (Pt.1033) 233 at 264,*** the Court of Appeal per Msehelia, JCA, held that:-

“It is trite law that he who asserts or claims a relief must prove it by credible

admissible evidence, and judgment for and grant of such claims must be based on legal evidence of the highest probative value and weight”.

The onus of proof in civil cases is however, not static. When a Claimant on whom the onus of proof primarily lies, adduces evidence in proof of his case, the onus shifts to the defendant against whom judgment would be given if no more evidence is adduced.

Thus in ***DIVINE IDEA LTD v UMORU (2007) ALL FWLR (Pt.380) 1468 at 1505***, the Court of Appeal, per Omoleye, JCA held that:

"By virtue of the provisions of section 137 of the Evidence Act, the burden of first proving the existence or non-existence of a fact in a civil case lies on the party against whom the judgment of the Court will be given if no sufficient or evidence at all or no further evidence is produced on either side, regard being had to any presumption that may arise on or from the pleading. If such a party adduces evidence which is accepted and which establishes a 'prima facie case' of such a fact, then the burden

shifts on to the other party against whom judgment would be given if no more evidence were adduced...."

The Claimant herein has led evidence which prima facie, established its claim against the Defendant. The Defendant on the other hand, has failed to place any evidence on their side of the scale of justice despite the ample opportunity he had to do so. Therefore, in the circumstances, the Claimant's claims remain uncontested and uncontroverted.

In ***MUSA & ORS V YERIMA & ANOR (1997) LPELR-1928(SC)***, the Supreme Court, per Onu, JSC, held that:-

"It is trite law that where a Plaintiff adduces oral evidence which establishes his claim against the defendant in terms of the writ and the evidence is not rebutted by the Defendant, the Plaintiff is entitled to judgment".

As a logical corollary and from the evidence adduced by the Claimant in this case, I am satisfied that the Claimant has made out a case as to be entitled to his claims. The said evidence having not been rebutted or controverted by the Defendant, leaves this Court with no other option than to rely on them as pleaded. On the basis of the foregoing authority, this Court, holds that the Claimant is entitled to judgment in this suit.

Accordingly, judgment is entered for the Claimant as follows;

1. An Order of this Honourable Court directing the Defendant to vacate and deliver vacant possession of the apartment known as Block 19, Flat 1, Short-put close, off 2nd Avenue, Zone 3, Games Village, Abuja, FCT to the Claimant.
2. An Order of this Honourable Court directing the Defendant to pay to the Claimant the sum of ₦11, 375,000.00 (Eleven Million, Three Hundred and Seventy-Five Thousand Naira) only being the rent arrears.
3. An Order of this Honourable Court directing the Defendant to pay to the Claimant the sum of ₦191,666.00 (One Hundred and Ninety-One Thousand, Six Hundred and Sixty-Six Naira) per month from the 15th day of January 2021 until the Defendant vacates and delivers vacant possession of the said apartment to the Claimant.
4. An Order of this Honourable Court directing the Defendant to pay 5% interest on the Judgment sum until the Judgment debt is fully liquidated.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance

Nnaemeka Otagburuagu:- Appearing with Peter Omatta Kadiri for
the Claimant