

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON THURSDAY, 13th DAY OF OCTOBER, 2022
BEFORE HON. JUSTICE NJIDEKA K. NWOSU-IHEME

SUIT NO.FCT/HC/CV/1038/2022

BETWEEN:

1. NA-YAYIYA NIGERIA LTD	1ST CLAIMANT
2. SANI AHMED DANTANKO	2ND CLAIMANT

AND

MOHAMMED ALI JAJARI	DEFENDANT
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JUDGMENT

The claimants [plaintiffs] commenced this action vide writ of summons filed on 28/03/2022. The pleadings in this case are:

- i. the claimants' statement of claim filed on 28/03/2022;**
- ii. the defendant did not file a statement of defence; and**
- iii. claimants did not file reply as there was no statement of defence.**

In the statement of claim filed on 28/3/2022, the claimants claim the following reliefs against the defendant:

1. AN ORDER OF THIS HONOURABLE COURT mandating the Defendant to immediately pay the Claimants the total sum of TEN MILLION, EIGHT HUNDRED AND FIFTY FOUR THOUSAND, ONE HUNDRED NAIRA (N10,854,100) ONLY being the cost of renovating and replacing the fixtures in House No. 35, House 2, Julius Nyerere Crescent, Asokoro, FCT-Abuja which fixtures were damaged by the Defendant before vacating the demised premises.
2. AN ORDER OF THIS HONOURABLE COURT mandating the Defendant to immediately pay the Claimants the total sum of SEVEN MILLION, FOUR HUNDRED AND TWENTY FIVE THOUSAND, SIX HUNDRED NAIRA

(N7,425,600) ONLY being the outstanding tenement rate accumulated by the Defendant in House No. 35, House 2, Julius Nyerere Crescent, Asokoro, FCT-Abuja before vacating the demised premises.

3. AN ORDER OF THIS HONOURABLE COURT mandating the Defendant to pay the Claimants the total sum of FOUR MILLION NAIRA (N4,000,000) only being general damages.
4. AN ORDER OF THIS HONOURABLE COURT mandating the Defendant to pay the Claimants the total sum of TWO MILLION NAIRA (N2,000,000) only being cost of litigation.
5. 10 percent post judgment interest from when judgment is given till the judgment sum is finally liquidated by the Defendant.
6. FOR SUCH FURTHER ORDERS as this Honourable Court may deem fit to make in the circumstance.

At the trial, Sani Ahmed Dantanko, the 2nd Claimant in this suit, testified as CW1. He adopted his statement on oath filed on 30/3/2022. CW1 tendered Exhibits P1, P2, P3, P4, P5, P6, P7, P8& P9.

On 08/06/2022, the matter came up for hearing and the court ordered substituted service of the Originating Processes, Hearing Notice and other subsequent court processes by pasting same on the last known addresses of the Defendant, No. 35, House 2 Julius Nyerere Crescent, Asokoro, FCT-Abuja.

Trial commenced in this suit on 29/06/2022, Defendant was absent and unrepresented despite having been served Hearing Notice on 24/06/2022. Trial commenced and the witness statement of CW1 was adopted. Matter adjourned for continuation of hearing. On 19/09/2022 matter came up for continuation of examination-in-chief the Defendant was absent and unrepresented despite being served with Hearing Notice on 12/09/2022. Court admitted the exhibits of CW1 and matter was adjourned for cross examination of CW1.

On 29/09/2022 Defendant was absent and unrepresented despite having been served with hearing notice on 19/09/2022. The Claimant Counsel applied for the Defendant to be foreclosed from cross examination of CW1, the Defendant was accordingly foreclosed from cross examination of CW1, CW1 was discharged and the case for the Plaintiff was closed, matter adjourned for Defence.

On 4/10/2022 the Defendant was absent and unrepresented despite having been served Hearing Notice on 30/09/2022. The case for the Defendant was closed. Counsel for claimant also waived their right to file a written address. Court granted all their prayers and matter was adjourned for judgment.

Evidence of CW1 –Sani Ahmed Dantanko:

In his statement on oath filed on 30/3/2021, the CW1 stated that the Defendant was a tenant of the Claimants until sometime in October, 2021 when he was lawfully evicted from the demised premises upon the execution of a valid court judgment wherein the District Court sitting in Karu ordered the Defendant to deliver vacant possession to the Claimants.

They discovered that the Defendant upon delivery of vacant possession carted away some of the items installed by the Claimant such as water heaters, electrical wires, security doors, damaged POP, walls tiles, mosquito nets, kitchen wardrobe roof, sky light tiles, water heaters, toilet seats, pressure pump, water reticulation, floor drain, security doors pressing shower and so many other fixtures damaged by the Defendant. Upon taking inventory of the fixtures stolen and damaged, LA TIER BY FRANCOIS CONSTRUCTION COMPANY LIMITED was engaged to replace both internal and external fixtures stolen and damaged by the Defendant thus spending N10,854,100 to replace and renovate the property.

The Defendant accumulated huge debt of N7,425,600 on tenement rate which claimant had to pay.

The law firm of Osaze Ebie & co engaged to prosecute the case cost the Claimants the sum of N2,000,000.

CW1 tendered the following documents:

1. Tenancy Agreement between the 1st Claimant and the Defendant Exhibit P1.
2. The Certified true copy of the judgment of the District Court, Karu Abuja Exhibit P2
3. The Certified true copy of the certificate of judgment of the District Court, Karu Abuja Exhibit P3

4. Certified true copy of the Warrant of possession of premises Exhibit P4
5. Pictures of the fixtures damaged by the defendant and pictures of the renovation carried out on the property by the Claimants together with the certificate of compliance by Sani Ahmed Dantanko exhibit P5
6. Copies of the tenement rate demand notice, payment receipt and acknowledgement of letter with the letterhead of Abuja Municipal Area Council Exhibit P6
7. Receipts for payment of items bought for renovation with the letterhead of Blessed Samuel C. CHYICO Investment (Nig) Ltd Stanley Okabuonye, SPAC Stallion Paint & Chemical industry Nigeria LTD, Tonnalink Global Resources LTD. Kelly Kris Links Nig LTD and JohnChris Exhibit P7.
8. List of expenses of workmanship/labour description with letterhead of LA TIER BY FRANCOIS CONSTRUCTION COMPANY LTD Exhibit P8.
9. Receipt for professional services Exhibit P9.

There was no cross examination of CW1 and claimants closed their case on the evidence of CW1.

ISSUE FOR DETERMINATION

The Claimants having waived their right to file final written address, this court will determine the suit on the following issue;

Whether the claimants are entitled to the reliefs sought?

The Defendant did not appear before this court neither did they file a memorandum of conditional appearance and statement of Defence as required by the rules of this court. In the circumstance of this case, where the Defendant failed and neglected to file any counter process in opposition to the evidence adduced by the Claimants, the case of the Claimants remains unchallenged, uncontroverted and not rebuttable. See the case of: ***ASAFA FOODS FACTORY V. ALRAINE [NIG] LTD [2002] 12 NWLR [PT.781] 353***

Where evidence is uncontroverted, the onus of proof is satisfied on a minimal proof since there is nothing on the other side of the scale see ***BURAIMOH V BAMGBOSE (1989) 2 NWLR (PT 109) 352.***

However, this court before it arrives at its decision must still consider the evidence of the Claimants irrespective of the fact that the Defendant failed to file his defence to the originating summons. The burden still rests on the Claimants to prove their case even though the requirement is minimal proof.

A Claimant must succeed upon the strength of his case and not on the weakness of the defence, although he is entitled to rely on evidence revealed in such weakness to strengthen his case. See ***OTUNBA ABDULLATEEF OWOYEMI V PRINCE OLADELE ADEKOYA 2013 12 SCNJ 131.***

The case of the Claimants in a nutshell is that, Defendant was a tenant of the Claimants until he was lawfully evicted from the demised premises upon the execution of a valid court judgment wherein the District Court sitting in Karu ordered the Defendant to deliver vacant possession to the Claimants.

The House was in a tenable condition when the Defendant took over possession but Claimants discovered that the Defendant upon delivery of vacant possession carted away with some of the items installed by the Claimant such as water heaters, electrical wires, security doors, damaged POP, wall tiles, mosquito nets, kitchen wardrobe roof, sky light tiles, water heaters, toilet seats, pressure pump, water reticulation, floor drain, security doors pressing shower and so many other fixtures damaged by the Defendant. Upon taking inventory of the fixtures stolen and damaged, Claimant replaced both internal and external fixtures stolen and damaged by the Defendant.

The Defendant accumulated huge debt of N7,425,600 on tenement rate which claimant had to pay.

Exhibit P1 captures the relevant portions of the tenancy agreement between the parties as follows:

“THE TENANT HEREBY COVENANTS WITH THE LANDLORD AS FOLLOWS: -

a) To pay all charges for electricity from AEDC, tenement rates and other utilities consumed on the Demised premises and to indemnify the landlord for payment of such bills on the determination of the tenancy whether as provided herein or otherwise.

b)

- c)
- d) **To keep the interior of the demised apartment including the doors, windows and window frames, electrical and plumbing fittings in good and tenantable repairs;**
- e)
- f)
- g)
- h)
- i) **to peaceably yield to the landlord the demised premises with all addition thereto (except tenants' fixtures and fittings) in such repairs and conditions as shall be in accordance with the covenants herein before contained at the expiration or sooner determination of the term contained herein created.**

This court respects the sanctity of contract as it is sacrosanct. The tenancy agreement had laid down the nature of the covenant between the Claimants and the Defendant.

It is trite that parties are bound by the terms of their agreement which they entered into.

In the case of ***OKONKWO V CCB (NIG.) PLC (2003) 8NWLR (PT. 822) P. 382 PARAS D-E*** the court put it succinctly:

"it is trite law that persons of full age and sound mind are bound by an agreement lawfully entered into by them."

Emphasis Mine

In the case of ***JADESIMI V EGBE (2003) 10 NWLR (PART 827) P. 30 PARAS. H-A, P. 31 PARAS E-G*** the Court held thus;

"... I will apply the doctrine of equity "pacta sunt servanda" which means that agreements voluntarily entered into must be honoured in good faith for equity will not allow the law to be used as an engine of fraud. See Hart v T.S.K.J. (Nig) Ltd (1998) 12 NWLR (part 578) 372..."

Emphasis Mine

In the case of ***N.I.C.N V Power Ind. Eng. Co. ltd (1986) 1NWLR (Part 14) 1 at 29, Aniagolu J.S.C*** had this to say;

"equity as well all know, inclines itself to conscience, reason and good faith and implies, system of law disposed to a just regulation of mutual rights and duties of men, in a civilised society.

Hence, in Earl of Oxford's case (1615), REP CHD, 20 Digest (Rep) 252 it is stated thus:

"Equity looks at the intent rather than the form and will impute an intention to fulfil that the appellant, far from scuttling away from its valid obligation to the respondent, will fulfil its agreement entered in January 1978, to indemnify the respondent from its loss."

Emphasis Mine

The Supreme Court in the case of ***JFS INV. LTD V BRAWAL LINE LTD. (2010) 12 SC (PT 1) P. 110 @ P. 162 PARAS 5 -15*** had this to say on the point;

"... where the terms of the contract are clear and unambiguous the duty of the court is to give effect to them and on no account rewrite the contract for the Parties. In the absence of fraud, duress, misrepresentation, the parties are bound by the terms of the contract they freely entered into".

Emphasis Mine

The onus is on the Claimant to prove by credible evidence this claim and discharge the burden. In the light of the foregoing, I hold that the defendant has not discharged the evidential burden placed on him by virtue of Sections 131, 132 and 133 of the Evidence Act, 2011 as amended.

In ***INEME v. INEC & ORS CITATION: (2013) LPELR-21415(CA) @ PER OTISI, J.C.A. @ Pp. 19-21, Paras. F-C;***

"The Appellant has rightly submitted that the burden of proof lies on him who asserts. In civil cases, while the general burden of proof in the sense of establishing his case lies on the plaintiff, such a burden is not static. There may be instances in which, on the state of the pleadings, the burden of proof lies on the defendant. As the case progresses, it may become the duty of the defendant to call evidence in proof or rebuttal of some particular point which may arise in the case. See; Section 131, 132, 133, and 136 of the Evidence Act 2011, which provide thus:

131.

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

132. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

133.

(1) 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.

(2) If the party referred to in subsection (1) of this section adduces evidence which ought reasonably to satisfy the court that the fact sought to be proved is established, the burden lies on the party against whom judgment would be given if no more evidence were adduced, and so on successively, until all the issues in the pleadings have been dealt with.

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(1) The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person, but the burden may in the course of a case be shifted from one side to the other.

(2) In considering the amount of evidence necessary to shift the burden of proof regard shall be had by the court to the opportunity of knowledge with respect to the fact to be proved which may be possessed by the parties respectively

The burden of proof shifted from the Claimants to the Defendant because the Plaintiff asserted by proving with documentary and oral evidence that the Defendant had breached the terms of Exhibit P1.

It is undisputed that there was an agreement between both parties and the terms of that agreement Exhibit P1 is before this court. The terms of this agreement afford this court the opportunity to ascertain whether there was a breach of contract.

The Claimants have also been able to show by virtue of the receipt of tenement rate paragraph a of Exhibit P1 that Defendant had a duty under the contract to pay tenement rate and he did not do so before vacating the premises.

The pictures attached reveal the extent of the condition the Defendant left the property Exhibit P5. The level of disrepair is glaring.

I find that the evidence of the Claimants remains unchallenged and uncontroverted, I accept same as true. I hereby determine the issue in the affirmative in favour of the Claimant as against the defendant. Therefore, I enter judgment in favour of the claimant and against the Defendant.

In light of the foregoing, I hold that the Claimant has discharged the evidential burden placed on him by virtue of Sections 131, 132 and 133 of the Evidence Act, 2011 as amended.

In relief 4, the claimants claim N2,000,000 as cost of litigation and attached exhibit P9 professional fees paid to her lawyer for N2,000,000. The prayer for payment of lawyer's professional fees of N2,000,000 is not one that can be granted under the present state of Nigerian Law. In **GUINNESS NIG. PLC V NWOKE (2000) 15 NWLR (PT 689) 135 AT 150** the court of appeal held that a claim for solicitors' fee is outlandish and should not be allowed as it did not arise as a result of damage suffered in the course of any transaction between the parties. Similarly, in the case of **NWANJI V COASTAL SERVICE LIMITED (2004) 36 WRNI AT 14-15**, the apex court referring to the decision in **IHEKWOABA V ACB LIMITED (1998) 10 NWLR (PT 571) 590 AT 610**, held that there is no basis for award of solicitor fee and that it is an unusual claim which is difficult to accept in this country as things stand today since there is no system of costs taxation to get a realistic figure and costs are awarded arbitrarily and certainly usually minimally. This claim must therefore fail.

Conclusion:

The Claimant is hereby entitled to the following reliefs:

1. An ORDER is hereby made mandating the Defendant to immediately pay the Claimants the total sum of TEN MILLION, EIGHT HUNDRED AND FIFTY FOUR THOUSAND, ONE HUNDRED NAIRA (N10,854,100) ONLY being the cost of renovating and replacing the fixtures in House No. 35, house 2, Julius Nyerere Crescent, Asokoro, FCT-Abuja which fixtures were damaged by the Defendant before vacating the demised premises.

2. An ORDER is hereby made mandating the Defendant to immediately pay the Claimants the total sum of SEVEN MILLION, FOUR HUNDRED AND TWENTY FIVE THOUSAND, SIX HUNDRED NAIRA (N7,425,600) ONLY being the outstanding tenement rate accumulated by the Defendant in House 35, House 2, Julius Nyerere Crescent, Asokoro, FCT-Abuja before vacating the demised premises
3. An ORDER is hereby made mandating the Defendant to pay the Claimants the total sum of ONE MILLION NAIRA (N1,000,000) only being general damages.
4. AN ORDER OF THIS HONOURABLE COURT mandating the Defendant to pay the Claimants the total sum of TWO MILLION NAIRA (N2,000,000) only being cost of litigation is refused.
5. 10 percent post judgment interest from when judgment is given till the judgment sum is finally liquidated by the Defendant is granted.

HON. JUSTICE NJIDEKA K. NWOSU-IHEME
[JUDGE]

Appearance of Counsel:

1. L.U. ABANZUKWE, O.F. ASOGWA Holding the brief of OSAZE EBIE for the Applicant.
2. Defendant absent and unrepresented