IN THE HIGH COURT OF JUSTICE OF THE F. C. T.
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT APO, ABUJA
ON THURSDAY, THE 30TH DAY OF MARCH, 2023
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO: FCT/HC/CV/300/2021

BETWEEN:

ENGR MUHAMMAD ALI KACHALLA ABUBAKAR **CLAIMANT**

AND:

H-MEDIX PHARMACY LIMITED **DEFENDANT**

JUDGMENT

By a Writ of Summons dated and filed on the 4th of February, 2021, the Claimant instituted this action seeking the following reliefs against the Defendant:-

a. An Order of this Honourable Court directing the Defendant to deliver immediate vacant possession of the property with appurtenances situate at No. 43 Adetokunbo Ademola Crescent, Wuse II, Abuja to the Claimant, the tenancy having terminated by effluxion of time on 12th January, 2021.
b. An Order of this Court directing the Defendant to pay the Claimant all *mesne* profit accrued since 12th January, 2021 (When the tenancy expired) calculated at the rate of ₦1,916,666.00 (One Million, Nine Hundred and Sixteen Thousand, Six Hundred and Sixty-Six Naira) only per month till the date the Defendant delivers possession of the property to the Claimant.
c. 10% post-judgment interest per annum on the judgment sum from date of judgment till final satisfaction of same.
d. ₦10,000,000.00 (Ten Million Naira) as general damages.

e. ₦10,000,000.00 (Ten Million Naira) as cost of this suit.

The Writ of Summons was accompanied with all the required originating processes. Upon being served with the originating processes in this suit, the Defendant, on the 6th of October, 2022, filed its Statement of Defence and Counter-Claim to the claim of the Claimant. It has the same date as the date it was filed. In the Counter-Claim, the Defendant counter-claims against the Claimant as follows:-

a. *A Declaration of Court that the Plaintiff breached the agreement the Plaintiff entered with the Defendant in 2012 and all other subsequent agreements for a long lease of fifteen (15) years over the Plaintiff's property/warehouse situate and known as Plot 554, Cadastral Zone A8, Abuja also known as No. 43 Adetokunbo Ademola Crescent, Wuse 2, Abuja when the Plaintiff, unilaterally, circumscribed the tenure of the Defendant/Counter-Claimant in the leased property in the drawn-up agreements to a lease described by the Plaintiff as a tenancy "for two years certain" which the Defendant was constrained to sign by the nature of her business after having already paid rent before executing same.*
b. *A Declaration of Court that there is no tenancy/lease tenure under our laws known as tenancy "for two years certain".*
c. *A Declaration of Court that the lease relationship that subsists between the Plaintiff and the Defendant over Plot 554 Cadastral Zone A8, Abuja also known as No. 43 Adetokunbo Ademola Crescent, Wuse II, Abuja is a long*

lease of fifteen years commencing from 11th January, 2012 to expire in the year 2027.

d. *A Declaration of Court that all the subsequent increments in rent on Plot 554 Cadastral Zone A8, Abuja also known as No. 43 Adetokunbo Ademola Crescent, Wuse II, Abuja by 15% in the sum of $18,750USD were unilaterally done by the Plaintiff without notice to the Defendant which the Defendant was constrained to pay due to the nature of her business in the Plaintiff's property.*

e. *An Order of Court restraining the Plaintiff from issuing any notice whatsoever whether to quit or of the Plaintiff's intention to apply to court to recover possession of Plot 554, Cadastral Zone A8, Abuja until the tenure of fifteen years agreed between the Plaintiff and the Defendant over the demised property fully expires.*

f. *An Order of Court setting aside all the portions of the tenancy agreements between the Defendant and the Plaintiff from 2012 to date made by the Plaintiff over Plot 554 Cadastral Zone A8 Abuja also known as No. 43 Adetokunbo Ademola Crescent, Wuse II, Abuja wherein the Plaintiff circumscribed the relationship between the Plaintiff and the Defendant to a "two year certain" tenure.*

g. *An Order of Court restraining the Defendant from further increasing rent over Plot 554 Cadastral Zone A8, Abuja known as No. 43 Adetokunbo Ademola Crescent,Wuse Ii, Abuja without notice and negotiation with the Plaintiff for the remaining tenure.*

h. *An Order of Court directing the Plaintiff to, forthwith, make refunds of all excess rent received by him from the Defendant.*

i. *An Order of Court directing the Plaintiff to pay the cost of retaining the Defendant's Counsel in the sum of ₦3,500,000.00 (Three Million, Five Hundred Thousand Naira) only for bringing and maintaining this action as a result of the Plaintiff's conduct.*

j. *An Order of Court awarding the sum of ₦50,000,000.00 (Fifty Million Naira) only being the loss the Defendant suffered or incurred as a result of an inferno that engulfed the property/warehouse due to substandard wiring of the property embarked upon by the Plaintiff.*

k. *An Order of Court awarding general damages in the sum of ₦10,000,000.00 (Ten Million Naira) only against the Plaintiff.*

l. *An Order of Court awarding cost arising in or from the action as an event.*

m. *And for such further or other orders as the Honourable Court may deem fit to make in the circumstance of this case.*

On the 14th of October, 2022, the Claimant filed a Reply to the Statement of Defence and a Defence to the Defendant's Counter-Claim. The Claimant urged the Court to dismiss the Counter-Claim and grant the reliefs sought by the Claimant in the Writ of Summons.

This suit came up for mention in this Court on the 11th of May, 2022. On that date, the Court adjourned the suit to the 14th of July, 2022 for hearing. On the next adjourned date, the Claimant opened his case, with the Claimant testifying as PW1. After being sworn, the Claimant, as PW1, proceeded to adopt his Witness

Statement on Oath of 4th of February, 2021 as his evidence in this case. Through him, the Claimant's Counsel tendered the following exhibits which were admitted and marked as exhibits. These are: tenancy agreement marked as **Exhibit A1 – A6**; six-month notice to quit dated 02/06/2020 marked as **Exhibit B1**, and Notice of Owner's Intention to Apply to Recover Possession dated 19/01/2021 marked as **Exhibit C1**. The case was adjourned to the 5th and 6th of October, 2022 for cross-examination.

On that date, however, the matter could not go on owing to arguments between Counsel on the propriety of Counsel for the Defendant filing his processes more than one year after the Defendant had been served and the Claimant's Counsel's application for cost. The matter was thereafter adjourned to the 21st of October, 2022. On that date, the Defendant's Counsel moved the Defendant's application to regularize the Defendant's processes. The Claimant's Counsel, who had filed the Claimant's response to the Defendant's processes, orally applied for the Claimant's processes to be deemed properly filed and served. The Court granted both applications.

Pursuant to the filing of the Defendant's processes and the filing of the Claimant's Reply to Statement of Defence and Defence to the Defendant's Counter-Claim in answer to the Defendant's Statement of Defence and Counter-Claim, the Claimant's Counsel applied to re-open the Claimant's case. The Court granted the relief sought. Consequent upon the grant of this application, the Claimant, as PW1, adopted his Additional Witness Statement on Oath filed on the 14th of October, 2022. He also tendered some exhibits in evidence. The Court admitted

them in evidence and marked them accordingly as follows: tenancy agreement dated 11th January, 2022 and marked as **Exhibit D1 – D7** and tenancy agreement dated the 17th of March, 2014 and marked as **Exhibit E1 – E6**.

In the Witness Statement on Oath of 4th of February, 2021, the PW1 averred that he rented out his property at No. 43 Adetokunbo Ademola Crescent, Wuse II, Abuja to the Defendant for a fixed period of two (2) years certain from 13th January, 2019 to the 12th of January, 2021 at the rent of ₦23,000,000.00 (Twenty-Three Million Naira only) per annum. It was the case of the Claimant that he issued a letter to the Defendant on the 2nd of June, 2020 reminding it that its tenancy would come to an end on the 12th of January, 2021. He followed this up with a Notice of Owner's Intention to Apply to Court to Recover Possession. In spite of these notifications, the Defendant refused to deliver vacant possession of the property; thereby leading to the institution of this present suit to recover the said premises.

In his Additional Witness Statement on Oath deposed to on the 14th of October, 2022, the PW1 denied several paragraphs in the Witness Statement on Oath of the Defendant's witness and went on to aver that he never agreed with the Defendant that the relationship between them would be a lease of fifteen (15) years. He swore that the tenancy he entered with the Defendant in 2012 was for a fixed tenancy of two years beginning from 31st January, 2012 to 30th January, 2014. He particularly denied that the premises was afflicted with faulty or substandard electrical wiring, adding that the Defendant had the opportunity to inspect the premises and would have detected the alleged faulty wiring if it was

true. He insisted that he was not responsible for any fire outbreak on the property. He also denied modifying the tenancy from a lease of fifteen (15) years to a tenancy of two (2) years, insisting that the tenancy was for two (2) years certain. He added that the tenancy of 2014 to 2016 was predicated on entirely different terms agreed upon by the parties. He also denied that the Defendant made any improvement on the demised property. it was his stated case that he was neither unreasonable in his relationship with the Defendant nor did he resort to self-help in the course of the tenancy. He invited the Court to note that the only valid tenancy agreement between the parties is the tenancy agreement for the rental period 2019 to 2021. He asserted that the Counter-Claim of the Defendant was an attempt by the Defendant to remain on the property thereby denying the Claimant of his reversionary interest in the property.

Upon the conclusion of his evidence-in-chief, the PW1 was cross-examined on the 21st of October, 2022. During his cross-examination, he confirmed that the Defendant had been in possession of the property since 2012 uninterruptedly. He described the property as a single three-floor building, providing the Court with detailed information relating to the property. He agreed that the tenancy agreement contained clauses for the landlord to visit the property, adding that he could not recall the number of times he visited the property. He disclosed that the tenant did not tell him the purpose to which it wanted to put the property. When he was presented with the exhibits upon the request to that effect by Counsel for the Defendant, he agreed that the tenant was into pharmaceutical business and sale of general goods.

When the PW1 was challenged that he received a letter from the Defendant regarding the fire incident at the property, he averred that he never received any letter, but, on the contrary, it was he who wrote a letter to the Defendant. He also confirmed the dates each of the fixed tenancies began and ended. He denied asking for ₦1,000,000.00 (One Million Naira) only as *mense* profit. Upon application by the Counsel for the Defendant, and with no objection from the Claimant's Counsel, the Defendant through its Counsel issued a certified bank draft of ₦42,166,652.00 (Forty-Two Million, One Hundred and Sixty-Six Thousand, Six Hundred and Fifty-Two Naira only) to the Claimant to cover the period from January, 2021 to October, 2022. He also issued a cheque of ₦30,000.00 being the cost this Court awarded against the Defendants on the 6th of October, 2022.

There was no re-examination. The Court thereupon adjourned to the 21st of November, 2022 for commencement of defence.

On the 21st of November, 2022, the DW1, Beba Iorwuese, who was the Senior Manager of the Defendant/Counter-Claimant, was sworn. He proceeded to adopt his Witness Statement on Oath of 6th of October, 2022 as his evidence-in-chief.

In the Witness Statement on Oath of the DW1 in support of the Defendant's Statement of Defence and Counter-Claim, the deponent, that is, the DW1, averred that the Defendant agreed with the Claimant to lease the Claimant's property known as No. 43 Cadastral Zone A8, Wuse II, Abuja, also known as No. 554 Adetokunbo Ademola Crescent, Wuse II, Abujafor a term of fifteen years at the rent of $106,250.00 (One Hundred and Six Thousand, Two Hundred and Fifty

United States Dollars) per annum. He further swore that the parties agreed that the rent would be payable every two years during the term of the lease. He stated that when the Claimant brought the tenancy agreement to the Defendant, the Defendant was shocked to see that the tenancy had been converted to a tenancy of a term certain for two years after it had already paid $212,500.00 (Two Hundred and Twelve Thousand, Five Hundred United States Dollars). It was the case of the Defendant that when it drew the attention of the Claimant to this fact, he assured it that it would be taken care of in subsequent agreements, adding that the references to lease in the body of the agreement should be enough to assuage the mind of the Defendant.

The deponent swore that the Defendant became aware of the substandard electrical work executed on the property only when it moved into the property. The Claimant, according to the Defendant, never took responsibility for the incessant power outages on the property caused by the faulty wirings. This state of affairs led to a fire incident on the property on the 9th of October, 2019, resulting in a complete loss of wares of the Defendant of ₦50,000,000.00 (Fifty Million Naira) only. When the Claimant was informed of the fire incident, he merely sent his lawyer to write a letter of sympathy to the Defendant without more.

The Defendant's case is that the Claimant continued to breach the lease agreement when, in 2014, he served on the Defendant a Notice of Owner's Intention to Apply to Court to Recover Possession. Because the Defendant needed a space, it had to comply with the Claimant's terms by issuing a Diamond Bank cheque of ₦34,000,000.00 (Thirty-Four Million Naira) which the Claimant

rejected, insisting on the sum of $250,000.00 (Two Hundred and Fifty Thousand Naira) for the two years at $125,000.00 (One Hundred and Twenty-Five Thousand Naira) only per annum, an increase of 15%. The witness swore that the 15% increase in the rent of the property became the Claimant's style throughout the duration of the tenancy relationship. He also, according to the Defendant's witness, continue to weaponise the statutory notices as a means of forcing the Defendant to pay his preferred rent. The Defendant was therefore compelled to institute an action against the Claimant, according to the witness, without the knowledge that the Claimant had already instituted the present action.

In support of its case, the witness identified the documents attached to his Witness Statement on Oath. Those documents were tendered and marked as exhibits as follows: tenancy agreement between the Claimant and the Defendant dated 11/01/2012 marked as **Exhibit A1 – A7**, renewal of rent dated 10/02/2014 marked as **Exhibit B1**, Notice of Owner's Intention to Apply to Recover Possession dated 04/02/2014 marked as **Exhibit C1**, Re-Renewal of rent dated 18/02/2014 marked as **Exhibit D1**, tenancy agreement between the parties dated 07/03/2014 marked as **Exhibit E1 – E6**; photocopies of cheques with different dates and amounts marked as **Exhibit F1 – F9**; Notice of Owner's Intention to Apply to Recover Possession dated 19/01/2021 marked as **Exhibit G1**; Notice of Landlord's Intention to visit and inspect the property dated 14/02/2019 marked as **Exhibit H1 – H2**; Notice of Landlord's Intention to visit and inspect the property dated 25/08/2020 marked as **Exhibit I1**; Notice of Landlord's intention to visit and inspect the property dated 31/08/2020 marked as **Exhibit J1**; Re: Demand Notice

of expiry of tenancy agreement dated 14/02/2018 marked as **Exhibit K1 – K3**; six-month notice to quit dated 02/06/2020 marked as **Exhibit L1**; Notice of Owner's Intention to Recover Possession dated 19/01/2019 marked as **Exhibit M1**; cash receipt dated 17/02/2021 marked as **Exhibit N1**; Letter of Sympathy dated 22/08/2019 marked as **Exhibit O1**, demand for outstanding one-year rent dated 20/07/2017 marked as **Exhibit P1 – P2** and Re: Outstanding rent payment dated 4/08/2019 marked as **Exhibit Q1**.

During his cross-examination, the DW1 confirmed that he was employed by the Defendant on the 02/02/2007. When he was presented with the Claimant's **Exhibit D1 – D7** and the Defendant's **Exhibit A1 – A7** which are the same document, that is, tenancy agreement executed in 2012, he confirmed that the Defendant did not execute any other agreement apart from the exhibit. He also confirmed that the Claimant's and Defendant's **Exhibit E1 – E6** was the only tenancy agreement the parties executed in 2014. Ditto for **Exhibit A1 – A6** dated the 13/01/2019 tendered by both parties and which the DW1 confirmed was the only tenancy agreement the parties executed in 2019.

When he was asked a question to that effect, the DW1 admitted that he was not an electrical engineer. He also admitted that the Defendant never obtained any approval before embarking on the improvements it carried out on the property. He conceded that the Defendant also sold perfumes and lubricants. He acknowledged that the Defendant made a payment of ₦42,166,652.00 (Forty-Two Million, One Hundred and Sixty-Six Thousand, Six Hundred and Fifty-Two Naira only) to the Claimant on the 21st of October, 2022. He stated that apart from the letters that

were tendered in evidence, the Defendant did not write any other letter to the Claimant in respect of the property.

After the cross-examination of the DW1, the Court adjourned to the 9th of December, 2022 for continuation of hearing in the absence of any re-examination. On that day, however, the Defendant's Counsel informed the Court that though it had intended to call its second witness, it would shelve that intention. It decided to close its case with the evidence of the DW1. The Court thereafter adjourned to the 17th of January, 2023 for adoption of final written addresses.

On the 17th of January, 2023, Counsel for the Defendant moved the Defendant's Motion on Notice with Motion Number M/3234/2023 dated the 12th of January, 2023 but filed on the 13th of January, 2023 seeking an order of the Court extending the time within which the Defendant would file and serve its Final Written Address. It also sought an Order deeming the Final Written Address already filed and served as having being properly filed and served. On the other hand, the Claimant orally applied that its Final Written Address which was proactively filed be deemed properly filed and served. The Court granted both applications and adjourned the matter to the 24th of January, 2023 for adoption of Final Written Addresses. On the 24th of January, 2023, the parties through their Counsel adopted their respective Final Written Addresses. The Court thereupon adjourned this suit for judgment.

In the Defendant's Final Written Address, the Defendant's Counsel formulated three issues for determination. These are: "*(a) Whether the Claimant is entitled to*

be granted possession, whether immediate or otherwise, when the 7 days Notice to Quit was issued by the Claimant and served on the Defendant within the currency of the tenancy the Claimant having admitted that the commencement date of the tenure of the Defendant in the demised premises was 31st January, 2012 renewable every two years? (b) Whether the Claimant put any material before the Court to be entitled to general damages of ₦10,000,000.00 (Ten Million Naira) and cost of the suit in the sum of ₦10,000,000.00 (Ten Million Naira)? (c) Whether there was an oral agreement between the Claimant and the Defendant for a long lease of the demised promises which was not adhered to by the Claimant by her drawing up tenancy agreements at various two yearly intervals since 2012?"

In his submissions on the first issue, learned Counsel argued that the Notice of Owner's Intention to Apply to Court to Recover Possession dated the 19th of January, 2023 and served on the Defendant the same date was invalid for the simple reason that it was served during the pendency of the Defendant's tenancy. He asserted that the Claimant did not lead evidence on the commencement date of the tenancy, adding that it was the Defendant who adduced evidence that established that the tenancy commenced on the 31st of January, 2012, a fact which he claimed the Claimant admitted in paragraph 6 of his Additional Witness Statement on Oath. He urged the Court to act on the admitted evidence.

It was the contention of the Defendant's Counsel that a contractual tenancy continues on the same conditions as the previous tenancy. He urged the Court to discountenance any reliance by the Claimant on the case of ***Pillars (Nig.) Ltd v.***

Desbordes (2021) 12 NWLR (Pt. 1789) 122 at 144, paras C – Hthat the filing of the Writ of Summons rectifies the incompetency in the statutory notices. Citing section 7 of the Recovery of Premises Act, he insisted that the service of the Notice of Owner's Intention to Apply to Court to Recover Possession could only be effected upon the determination of a tenancy and not during the subsistence of a tenancy as the Claimant had done. For all his submissions on Issue One, Counsel cited and relied on the cases of ***Oceanic Bank Int'l Plc v. CSS Ltd (2012) 9 NWLR (Pt. 1305) 397 at 411 para D; African Petroleum Ltd v. Owodunni (1991) 8 NWLR (Pt. 210) 391 at 413; Farajoye v. Hassan (2007) AII FWLR (Pt. 368) 1070 at 1088 paras B – C; Uhuangho v. Edegbe (2017) AII FWLR (Pt. 907) 1788 at 1806 – 1807, paras G – A; Oketade v. Adewunmi (2010) AII FWLR (Pt. 526) 511 paras A – B***.

In his argument on Issue Three, which he took before Issue Two, Counsel submitted that, indeed, there was an oral agreement between the Claimant and the Defendant for a long lease of fifteen years on the property. He referred to the relevant paragraphs in the Statement of Defence and urged the Court to hold that the Defendant had made out exceptions to the general rule that oral agreement cannot be used to modify the terms of a written contract. He explained that the reason the Defendant executed the tenancy agreements since 2012 was because the Claimant put it under duress, since the Defendant had paid the rent before the tenancy agreement was prepared and knowing that the nature of its business would not allow it to relocate its business from one property to another within a short space of time.

Counsel cited the provisions of section 128(1)(a) of the Evidence Act, 2011 and the cases of ***Gana v. FRN (2018) 12 NWLR (Pt. 1633) 294 at 306, Olowu v. Building Stock Ltd (2018) 1 NWLR (Pt. 1601) 343 at 398, para G – H, Animashaun v. Ogundimu (2016) All FWLR (Pt. 832) 1783 at 1802 paras G – H*** to enhance his submissions on this issue.

On Issue Two, learned Counsel submitted that the claims of the Claimant for the award of general damages of ₦10,000,000.00 (Ten Million Naira) only and the award of ₦10,000,000.00 (Ten Million Naira) only as cost of the action should fail, as the Claimant had not shown his entitlement to those reliefs. Citing the case of ***Agu v. General Oil Ltd (2015) 17 NWLR (Pt. 1488) 327 at 341, para G***, he submitted that the award of general damages and cost of action could not be made in the absence of pleading and evidence to that effect. He therefore urged the Court to resolve the issues in favour of the Defendant and dismiss the claims of the Claimant while entering Judgment in respect of the Defendant's counter-claim.

In the Claimant's Final Written Address, learned Counsel distilled four issues for determination. These are: *(1) Whether from the evidence before this Court, there was a long lease agreement for 15 years between the parties in respect of the property; (2) Whether the Claimant has met the conditions to be entitled to recovery of possession of the property and* mense *profit as prayed; (3) Whether upon grant of the Claimant's principal reliefs, the Claimant should be awarded post-judgment interest, general damages and costs of the suit in the overall*

interest of justice; (4) Whether from the evidence before the Court, the Defendant/Counter-Claimant is entitled to the reliefs sought in the counterclaim.

In his submissions on the first issue, learned Counsel for the Claimant argued that the Defendant failed to discharge the burden of proof incumbent on it in view of its assertion that an oral agreement existed between the Claimant and the Defendant for a lease of the property for a period of fifteen years. Relying on the case of ***Odutola v. Papersack (Nig) Ltd (2007) All FWLR (Pt. 350) 1214***, Counsel maintained that the Defendant failed to adduce evidence such as the time the oral agreement was purportedly made, the representatives of the parties present at the meeting, the venue, time and date of the meeting and the nature of the agreement reached. He also submitted that the *ipse dixit* of the Defendant's witness was not enough to establish the claims of the Defendant. Learned Counsel further cited section 131 of the Evidence Act, 2011 and the cases of ***Ajigbotosho v. R.C.C. Ltd (2019) 3 NWLR (Pt. 1659) SC 287 at 298, para F – G; Okunade v. Olawale (2014) 10 NWLR (Pt. 1415) 273; Fatunbi v. Olanloye (2004) 12 NWLR (Pt. 887) 229 at 247, para C*** among other cases while also distinguishing the case of ***Olowu v. Building Stock Ltd (2018) 1 NWLR (Pt. 1601) SC 343***.

Arguing further on this issue, Counsel maintained that the DW1's oral testimony lacked the potency to alter the contents of tenancy agreements which the parties willingly executed and which were admitted in evidence. He cited section 128 of the Evidence Act, 2011. He drew the attention of the Court to the fact that all the tenancy agreements tendered and admitted in evidence were for fixed two-year tenancies. He contended that in any case a lease presupposed an arrangement of

term above three years which, by virtue of section 3 of the Statute of Frauds 1677, ought to be in writing. In the absence of any written agreement evidencing such long lease as claimed by the Defendant, there was no such lease in existence. He urged the Court to accord the documents their full probative value. He relied on ***Kimdey v. Mil. Gov. Gongola (1988) 2 NWLR (Pt. 77) 445, Nze Bernard Chigbu v. Tonimas Nig. Ltd (2006) 9 NWLR (Pt. 984) SC 189; Abdulaziz v. Garba (2021) 3 NWLR (Pt. 1764) CA 379 at 393 A – B, Bijou (Nig.) Ltd v. Osidarohwo (1992) 6 NWLR (249) CA 643 at 649, paras B – C*** among other cases to urge the Court to resolve this issue in favour of the Claimant.

On the second issue, Counsel submitted that the Claimant had satisfied all the requirements for the valid institution of this suit. He pointed out that the tenancy between the parties was for a fixed term, adding that the tenant was entitled to only a Notice of Owner's Intention to Apply to Court to Recover Possession. He maintained that the service of the Notice to Quit on the Defendant was a surplussage and did not in any way invalidate the process of recovery of the said premises. He asserted that the sum of ₦42,166,652.00 (Forty-Two Million, One Hundred and Sixty-Six Thousand, Six Hundred and Fifty-Two Naira only) which the Defendant paid in the open Court was for *mense* profit which had accrued as at October, 2022 and not for rent. He urged the Court to hold that the case of ***African Petroleum Ltd v. Owodunni (1991) supra and Farajoye v. Hassan (2007) supra*** were inapplicable to the present suit.

For all his arguments on this issue, learned Counsel cited and relied on a number of cases such as ***Iheanacho v. Uzochukwu (1997) 2 NWLR (Pt. 487) 257 at 269***

– 270, paras H – A; Abdulaziz v. Garba (2021) 3 NWLR (Pt. 1764) CA 379 at 395 paras B – D; Agbamu v. Ofili (2004) 5 NWLR (Pt. 867) CA 540 at 570, paras F – H; Pillars (Nig.) Ltd v. Desbordes (2021) supra in urging the Court to resolve this issue in favour of the Claimant.

On the third issue, learned Counsel submitted that the Claimant was entitled to the reliefs for post-judgment interest, general damages as well as cost of the action. He relied on Order 39 Rule 4 of the Rules of this Court, 2018 to submit that the Court has the powers to grant the relief for post-judgment interest. Citing the case of ***Elf Pet. (Nig.) Ltd v. Umah (2018) 10 NWLR (Pt. 1628) 428 SC at 448, paras B – D***, he argued that the Claimant had satisfied the requirements for the award of general damages. On the Claimant's claim for cost of action, learned Counsel referred this Court to Order 56 Rule 1(4) of the Rules of this Court as well as the case of ***Mekwunye v. Emirates Airines (2019) 9 NWLR (Pt. 1677) SC 191 at 242 para A*** and contended that it was the Defendant's breach that impelled the Claimant to incur the cost of approaching the Court to recover his premises from the Defendant. He therefore urged the Court to resolve the issue in favour of the Claimant.

On the fourth issue, Counsel drew the attention of the Court to the fact that the reliefs sought by the Defendant in the counter-claim are declaratory in nature. He emphasized on the standard of proof required in suits for declaratory reliefs. He insisted that the Defendant/Counter-Claimant had not been able to establish its entitlement to the declaratory reliefs sought. Citing the case of ***Bill & Brothers Ltd v. Dantata & Sawoe C.C.N. Ltd (2021) 12 NWLR(Pt. 1789) CA 50 at 78 paras E***

– ***F***, he urged the Court to resolve this issue in favour of the Claimant and dismiss the counter-claim.

In the Defendant/Counter-Claimant's Reply on Points of Law to the Claimant's Final Written Address, learned Counsel for the Defendant addressed the four issues the Claimant had formulated. Responding to the first issue, the Counsel submitted that the standard of proof in civil matters was on the preponderance of evidence, adding that it is the pleadings that determines whether a party has discharged the onus on them. He insisted that the oral evidence of the DW1 satisfied this evidential requirement. He quoted copiously from the following cases: ***ACB Plc v. Nbisike (1995) LPELR-14214 (CA) at 37 – 38, paras D – D; Asset Management Corporation of Nigeria v. Oluseyi Owemimo SAN & Anor (2018) LPELR-53051 (CA) at 17, paras A; Nnaemeka Okoye & Ors v. Ogugua Nwankwo (2014) LPELR-23172 (SC)*** among other cases.

Addressing the second issue, learned Counsel maintained that the tenancy relationship between the parties was not for a fixed term of two years, but for a fifteen-year lease with payment of rents at intervals of two years. He referred this Court to **Exhibit E1 – E6** as well as **Exhibit D1 - D7** to substantiate his claim that the Notice of Owner's Intention to Apply to Court to Recover Possession was defective, as the tenancy was still running. He cited the case of ***Odunsi & Anor v. Abeke (2002) LPELR-12167 (CA)*** on how to determine the term of a tenancy.

In his answer to Issue Three, Counsel insisted that by paying the sum of ₦42,166,652.00 (Forty-Two Million, One Hundred and Sixty-Six Thousand, Six

Hundred and Fifty-Two Naira only), reliefs (b) and (c) were no longer alive and the Court should not grant same. This, he submitted, is because the idea behind the award of general damages is rooted in *restitutio in integrum*. He cited the cases of ***Hadley v. Baxendale (1854) 9 Exch. 341; Agbanelo v. Union Bank of Nigeria Ltd (2000) 4 SC (Pt. 1) 233 at 245; A. I. C. Ltd v. Ogun State Govt (2014) LPELR-23385 (CA) at 58 para C*** among other cases to the same effect.

On the final issue, Counsel submitted that a counter-claim is an independent action which is subject to the rules of pleadings and proof. He cited the case of ***Oseni v. Bajulu (2010) 178 LRCN 26 and Alhaji Aminu Ishola v. Union Bank of Nigeria Limited (2005) 21 NSCQR 167*** in support of his submissions that the Court is bound to act on credible evidence adduced by a party. He referred this Court to all the documentary exhibits tendered by the Defendant through its DW1 and admitted in evidence by the Court. He urged the Court to discountenance the submissions of the Claimant's Counsel and grant the reliefs sought in the counter-claim of the Defendant.

I have taken my time to review the facts and the law of the respective cases of the parties as diligently canvassed by both their witnesses and their Counsel. Three issues lend themselves for resolution. The first is this: ***Whether the nature of the relationship between the Claimant and the Defendant is a fixed term tenancy of two years or a long lease of fifteen years?*** The second is this: ***Whether the Claimant has not satisfied the requirements of the law for the recovery of his premises known as Plot 554 Cadastral Zone, A8 also known as No. 43***

Adetokunbo Ademola Crescent, Wuse II, Abuja? The third is this: ***Whether the Defendant is not entitled to the reliefs sought in its counter-claim?***

On Issue One, that is, whether the nature of the relationship between the Claimant and the Defendant is a fixed term tenancy of two years or a long lease of fifteen years, it bears repeating that parties in this case has held onto widely divergent views on the nature of the tenancy relationship that exists between them. According to the Claimant, the relationship that is in existence between the parties was a fixed tenancy of two years. To substantiate this claim, the Claimant, testifying as PW1 tendered a tenancy agreement which was admitted in evidence on the 14th of July, 2022 and marked as **Exhibit A1 – A6**. I have studied this exhibit meticulously. It is dated the 13th of January, 2019. The habendum states thus: "*In consideration of the rent hereby reserved and the terms, conditions and covenants hereinafter contained, the Landlord hereby lets to the tenant all that property lying and situate at No. 43 Adetokunbo Ademola Crescent, Wuse II (Plot 554) Cadastral Zone A8 Abuja, Nigeria for a single and final two year term commencing from 13th January, 2019 and terminating 12th January, 2021 at a rate of Twenty-Three Million (₦23,000,000.00) Naira only per annum totaling Forty-Six Million (₦46,000,000.00) only being rent on the demised premises.*"

On the other hand, the Defendant, through its sole witness, DW1, testified at paragraph 4 of his Witness Statement on Oath that the tenancy relationship between the Claimant and the Defendant was one for a long lease of fifteen (15) years which began in 2012 and was due for determination in 2027. He insisted that the Claimant breached the oral terms the parties agreed upon prior to the

reduction of the relationship in writing. He tendered a number of exhibits which include tenancy agreements dating back to 2012.

Exhibit A1 – A7 tendered by the Defendant is the tenancy agreement made on the 11th of January, 2012. This exhibit is the same as **Exhibit D1 – D7** tendered by the Claimant. The habendum of this tenancy agreement indicated that the tenancy created therein was "*for a term of two years, commencing on the 31 of January, 2012 and terminating 30January, 2014 at a rent of $106,250 (One Hundred and Six Thousand, Two Hundred and Fifty) United States Dollars only payable two years in advance, the sum of which is $212,500 (Two Hundred and Twelve Thousand, Five Hundred) United States Dollars only or its equivalent in NGN at the prevailing exchange rate, being rent on the subject property*."

Exhibits B, C and D tendered by the Defendant are a series of correspondence between the Claimant and the Defendant. **Exhibit C** is titled "NOTICE OF OWNER'S INTENTION TO RECOVER POSSESSION OF ALL THAT MULTI-PURPOSE PROPERTY AND APPURTENANCES, SITUATE AT NO. 43 (ALSO KNOWN AND REFERRED TO AS PLOT 554 ADETOKUNBO ADEMOLA CRESCENT, CADASTRAL ZONE A08 WUSE II, ABUJA, FCT". It was dated the 4th of February, 2014. In the first paragraph, the solicitor to the Claimant reminded the Defendant that it held the property "*under a certain term of tenancy for two years and which said term has definitely expired and become terminated by effluxion of time, to your due knowledge, since the 30th of January, 2014*."

In the second paragraph, the solicitor continued: "*Also note that you have paid no rent nor indicated any interest in renewing your tenancy on the above property despite the requirement from you of a 3 months' Notice of Intention to Renew as contained in the tenancy agreement.*" The renewal clause referred to in the paragraph of this exhibit is paragraph (a) of the parties' joint covenants of **Exhibit A1 – A7 (D1 – D7)**. The clause reads: "*The Landlord shall grant to the tenant a further term of two years upon receipt of written notice of tenant's intention to renew the tenancy, given at least three months to the end of the current term. The rent and conditions of the renewal shall be agreed on by the parties. PROVIDED that at the time of such request there is no breach of any term, condition or covenants herein contained. In the event that the parties are unable to reach an agreement on the rent and the terms of the renewal one month before the end of the current term, then this agreement shall be terminated immediately and the tenant shall vacate the demised premises at the end of the term hereby granted.*"

Exhibit B is a letter from the Defendant's solicitors to the Claimant's solicitors. It is titled "RENEWAL OF RENT IN NO 43 ADETOKUNBO ADEMOLA CRESCENT WUSE II, ABUJA". It was dated the 10th of February, 2014. The second paragraph of the exhibit is quite revealing. It states that "*We hereby forward herewith a diamond bank cheque of ₦34,000,000.00 (Thirty-Four Million Naira) for a two-year renewal of our rent at 43 Adetokunbo Ademola Crescent, Wuse II, Abuja*".

Exhibit D is the reply from the solicitors of the Claimant to the Managing Director of the Defendant in respect of **Exhibit B**. It was dated the 18th February, 2014. In this exhibit, the Claimant rejected the sum paid by the Defendant for the renewal

of the tenancy and insisted that the Defendant deliver vacant possession of the property.

Eventually, the parties herein executed **Exhibit E1 – E6** tendered by the Defendant (same as **Exhibit E1 – E6** tendered by the Claimant). The commencement date for this term was described in the habendum as the 13th of January, 2014 and the termination date of the tenancy created was 12th January, 2016. The nature of the tenancy was described as "*a term of two years*".

None of the parties tendered any tenancy agreement for the period 13th January, 2016 to 12th January, 2019. It would seem, however, that the parties' relationship was governed by a tenancy relationship which none of them exhibited. An inkling that a tenancy agreement was, indeed, executed by the parties could be seen form the contents of **Exhibit K1 – K3**, which was a letter written by the Claimant's solicitors to the Defendant. It was dated the 14th of February, 2019. The second paragraph states *inter alia*: "*Yours in reference above is a total misconception, a misunderstanding and a complete distortion of the tenancy agreement which expired on 12th January, 2019 as it was very explicit and unambiguous. It was for a term certain "… a single and final two year term…"*" The third paragraph reads that "*There was no provision for renewal as same was not intended by both parties…*" The solicitor referred to paragraph 2 of that agreement which stated that the only notice to be served would be the Notice of Owner's Intention to Apply to Court to Recover Possession. Curiously, the Defendant exhibited **Exhibit K1 – K3**, but it did not exhibit the particular correspondence that triggered **Exhibit K1 – K3**.

Exhibit P1 – P2 tendered by the DW1 also provided an idea into what happened between 13th January, 2016 to 12th of January, 2019. **Exhibit P1 to P2** is a letter written to the Defendant by the solicitors to the Claimant. It was dated 20th July, 2017 and titled "DEMAND FOR PAYMENT OF THE OUTSTANDING ONE YEAR RENT THE SUM OF TWENTY-THREE MILLION NAIRA (₦23,000,000.00) ONLY" The letter reads *inter alia* "*We refer to the tenancy agreement Engr M. A. K. Abubakar MFR, OFR and your good self in respect of property No. 48 Adetokunbo Ademola Crescent, Wuse II, Cadastral Zone A8, Abuja dated 13th January, 2017 for a period of two (2) years. You will remember that on your request you paid for one (1) year and the other one (1) year to be paid on or before 13th July, 2017. The balance of one (1) year rent therefore became due since 13th July, 2017 and there is no response from you in that regard. We are therefore in the circumstances compelled to demand and we hereby demand for the payment of the balance of one (1) year rent, the sum of Twenty-Three Million Naira (₦23,000,000.00) only as contained in the said agreement, clause 2 under the tenant's covenant with the landlord.*"

I have taken the pain of embarking on this odyssey of evaluating the evidence before me as I seek to unravel the nature of the tenancy relationship between the Claimant and the Defendant. One recurring attribute I noticed as I progressed in this exploratory mandate is that there is a concurrence of opinion between the Claimant and the Defendant as to the terms of the tenancies created since 2012. Thus, contrary to the deposition of the DW1 in paragraphs 4, 5 and 6 of his Witness Statement on Oath that the Claimant and the Defendant settled on a

fifteen-year leasehold and that the Defendant was scandalized when the Claimant unilaterally shrunk it to a tenancy for a two-year certain, there is nothing in the evidence before me to that effect. If there was such intention to create a fifteen-year leasehold, the Defendant did not evince such intendment in any of its correspondence it wrote to the Claimant in the course of the tenancy. On the contrary, what I saw was a meeting of the minds between the Claimant and the Defendant on the duration of each tenancy that was created.

The Courts have stated that parties are bound by the terms of the agreement they voluntarily entered into. See the case of ***A-G Rivers State v. A-G Akwa Ibom State (2011) 8 NWLR (Pt. 1248) 31 at 82, para. B; 83, paras. E-F;84, paras. D-H***. In***Best (Nig.) Ltd v. Blackwood Hodge Nig. Ltd & Anor (2011) LPELR-776(SC) at 23, paras. C-E***where the Supreme Court held per Fabiyi, JSC that "***Parties are bound by the terms agreed to in a contract. If the conditions for the formation of a contract are fulfilled by the parties thereto, they will be bound…***"

Though the Defendant has alleged duress as the reason it continued with the tenancy. A party who alleges duress in the course of any proceeding has a duty to prove the elements of duress before he can be entitled to the relief which is so dependent on the allegation of duress. In ***S.P.D.C.N. Ltd. v. Nwawka (2003) 6 NWLR (Pt. 815) 184 S.C. at 210, paras C – D***, the Court held that "***Where a party alleges duress in relation to an agreement, he must plead necessary averments, to wit:(a) consent; (b) the nature of the threat or pressure that is***

claimed amounted to duress; and (c) the fact that consent was obtained under such pressure and by compulsion."

An analysis of the correspondences tendered as exhibits in this case does not disclose any vitiating element such as duress and undue influence as propagated by the Defendant. The tenancy agreement dated the 13th of January, 2019 and tendered as **Exhibit A1 – A6** by the Claimant is valid, binding and remains the operative document that regulates the relationship of the Claimant and the Defendant. It is,therefore, the duty of the Court to give effect to the terms of the agreement as long as the terms were reached by the parties without any form of compulsion, duress or undue influence. To this end, therefore, I hold that the Defendant failed to established the element of duress.

It remains to be stated that each tenancy agreement, entered into between the Claimant and the Defendant from 2012 to 2019 constituted a separate, distinct, and enforceable contracts independent of each other. **Exhibits B, C and D** which the Defendant's sole witness tendered dwelt so much on the issue of renewal of tenancy and payment of the new reserved rent. The renewal and increment of the rent payable would not have arisen if the parties intended that the tenancy was intended to be a fifteen-year lease. In fact, in stark opposition to the averments of the DW1 in his witness statement on oath, the Defendant did not use the opportunity afforded by **Exhibits B, C, and D** to remind the Claimant that what they discussed was a fifteen-year lease and not a fixed tenancy of two years certain. Thus, I find itdifficult to agree with learned Counsel for the Defendant that the commencement date for the tenancy under dispute is 31st of January, 2019

whereas it is stated clearly in the habendum that the tenancy would commence on the 13th of January, 2019 and end on the 12th of January, 2021. Since that is the case, the fact that the Defendant had been on the premises since 2012 does not give rise to the presumption, or, even, establish as a fact, the presumption that the parties intended to create a long-term leasehold. In fact, it is my considered view that the creation of fixed tenancies of two-year certain from 2012 to 2019 on terms that were often different from the terms of the preceding tenancy agreement was deliberate, conscious, intentional and considered. The intentions of the parties thereto were effulgent and unequivocal. The duty of the Court in this circumstance, is to give effect to the intentions of the parties already reduced into writing and not to rewrite their agreement for them. See **Best (Nig.) Ltd v. Blackwood Hodge Nig. Ltd & Anor (2011) LPELR-776(SC) at 23, C – E. 14**. In **Ecosolar Int'l Ltd & Anor v. Riverbank Capital Ltd (2020) LPELR-49594(CA) at 24, paras A – C**, the Court held that "***It is rudimentary law that parties are bound by the terms of their contract and that the said terms should be read as they are without any embellishments. Put differently, terms which are extraneous to the contract and on which there was no agreement cannot be read into the contract.***"

I am not oblivious of the cases of***ACB Plc v. Nbisike (1995) LPELR-14214 (CA) at 37 – 38, paras D – D*** and ***Asset Management Corporation of Nigeria v. Oluseyi Owemimo SAN & Anor (2018) LPELR-53051 (CA) at 17,para A*** which learned Counsel has cited in support of his submissions that the Court should act on the oral evidence of the DW1 that a long term of fifteen years was what the parties created in 2012 and that the said lease would come to an end by effluxion

of time on the 30th of January, 2027. The law is settled that he who alleges must proof. See sections 131(1) and 132 of the Evidence Act, 2011. See also the following cases: ***Faloughi v. First Impression Cleaners Ltd. (2014) 7 NWLR (Pt. 1406) 335 C.A. at 370, paras. B-C; Akande v. Adisa (2012) 15 NWLR (Pt. 1324) 538 S.C. at 558, paras. A-G; 571-572, paras. H-C; 574, para. D; 583, paras. G-H***.

The mountain of documentary evidence before me points to the creation of distinct fixed tenancies of two-year certain. There is no reference, either in the tenancy agreements or letters exchanged between the parties that they intended to create a lease of fifteen years. Contrary to the submissions of the Defendant's Counsel that a court can act on the *ipse dixit* of a witness, I hold that such does not apply in this case for several reasons. First, an *ipse dixit* is a piece of evidence that rests on the authority of the witness adducing it. See ***Egesimba v. Onuzuruike (2002) 15 NWLR (Pt. 791) 466 S.C. at 502,paras C – E***. The Defendant and its Counsel did not establish the credentials of the DW1 as a person of authority on the facts sought to be established.Second, the Court cannot act on the *ipse dixit* of a witness where there are overwhelming and compelling evidence before the Court that counters and negates the assertion in the *ipse dixit* evidence of the witness.See ***Okeke v. Nwigene (2022) 3 NWLR (Pt. 1817) 313 S.C. at 341, paras A – C.***Third, the *ipse dixit* of a witness may be accepted by the Court, but the Court has the discretion to determine its probative value even where the *ipse dixit* evidence is not challenged. See ***Ohadugha v. Garba (2000) 14 NWLR (Pt. 687) 226 C.A. at 251, para E.***The *ipse dixit* of a witness is also not sufficient

evidence where the nature of the hearing requires the adducement of further evidence in proof of a fact. See the case of ***Okunade v. Olawale (2014) 10 NWLR (Pt. 1415) 207 C.A. at 273, paras C – D*.**

In view of the foregoing, therefore, I have no hesitation in arriving at the ineluctable conclusion that the tenancy relationship created by the parties and which exists between them was for a term certain of two years beginning from the 13th of January, 2019 and ending on the 12th of January, 2021. In other words, there is nothing before me, except the *ipse dixit* of the DW1, that the parties intended to create a fifteen-year lease and not a two-year fixed tenancy. This Court cannot, therefore, prefer the *ipse dixit* evidence of the DW1 to the intimidating massif of documentary evidence before me, tendered by both the Claimant and the Defendant.

It is in the same vein that I discountenance in its entirety the argument of learned Counsel for the Defendant that the law does not recognize a two-year tenancy. His authority for his submission is section 8 of the Recovery of Premises Act which prescribes the length of notice to be served on a tenant in order to determine certain terms. The submission of learned Counsel in this regard is specious and, therefore, goes to no moment. I will say no more on this.

Having found that what existed between the Claimant and the Defendant was a fixed tenancy of two-year certain, commencing on the 13th of January, 2019 and terminating on the 12th of January, 2021, I shall move on to the second issue, which is, whether the Claimant has not satisfied the requirements for the recovery

of his premises known as Plot 554 Cadastral Zone, A8 also known as No. 43 Adetokunbo Ademola Crescent, Wuse II, Abuja.The satisfaction of all conditions precedent necessary to the commencement of any action is very germane to the survival of any suit in Court. This is because the satisfaction of all conditions precedent is an important element in the vesting of jurisdiction on a Court. In the*locus classicus* of ***Madukolu v. Nkemdilim (1962) 2 SCNLR 341***, the Federal Supreme Court per Vahe Bairamian FJ held that:

> ***"…I shall make some observations on jurisdiction and the competence of a court. Put briefly, a court is competent when***
>
> ***(1) it is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; and***
>
> ***(2) the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction: and***
>
> ***(3) the case comes before the court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of jurisdiction.***
>
> ***Any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided: the defect is extrinsic to the adjudication."***

In the case of an action for recovery of premises, the condition precedent is the service of the adequate and lawfully stipulated statutory notices by a person legally invested with the powers to so do. These statutory notices must be served on the tenant before a summons can be issued from the Court vested with jurisdiction. The Court was quite definitive when it held in ***D.M.V. (Nig.) Ltd. v. N.P.A (2019) 1 NWLR (Pt. 1652) 163 at pp. 184, para. A; 185, paras. C, F-G; 186, paras. E-F*** that "***A landlord is entitled to recover his premises from a tenant after due compliance with the requirement of giving adequate notice to the tenant for that purpose...***"

An examination of the evidence before me points to the inevitable conclusion that the term of the tenancy created was for a term of two-year certain. The terms of the tenancy agreement dated the 13th of January, 2019 are quite effulgent on this. The question, therefore, is whether the Claimant took the right steps prescribed by the law, in the recovery of the premises covered by the nature of the tenancy created by **Exhibit A1 – A6** tendered by the Claimant.

Perhaps, it is important at this junction to draw a distinction between a fixed tenancy, which is the nature of the tenancy created by the Claimant's **Exhibit A1 – A6**, and a periodic, or revolving tenancy. A fixed tenancy is a tenancy which begins and ends on definite dates. In other words, a fixed tenancy is a tenancy that is created to last for a specified length of time.It is a construct of the expressed intentions of the parties that the tenancy is for a term certain. See ***Oteri Holdings Ltd. v. H.B. Co. Ltd at (2021) 1 NWLR (Pt. 1756) 29 C.A. at Pp. 72-73, paras. G-G***.On the other hand, a periodic tenancy is a tenancy that rolls over from

one tenancy period to another. See ***Efrede v. Ita (2021) 9 NWLR (Pt. 1780) 89 C.A. at 112, paras A – D*.**

The operative question at this point, therefore, remains whether the Claimant, in instituting this present action, complied with the conditions precedent to the institution of a suit of this nature. It is settled that in commencing an action for recovery of premises, the Claimant is required to comply with certain conditions precedent. The first of these conditions is that the Claimant, as the landlord, must have served on the Defendant who is the tenant the required statutory notices. These statutory notices are the notice to quit which serves the purpose of severing the landlord/tenant relationship between the parties and the notice of owner's intention to apply to recover possession, which is a communication to the tenant, now occupier, from the landlord, now the owner, of his intention to take possession of his promises.

The distinction between a fixed tenancy and a periodic tenancy is important because it determines the type of notice to be served on the tenant by the landlord. In ***Abdulaziz v. Garba (2021) infra, at 394, para D***, the Court held that "***In a tenancy relationship, the nature of the tenancy determines the length of notice to be given before the Landlord can apply for the recovery of the demised premises***."In a fixed tenancy, the tenant is not entitled to the service of a notice to quit. This is because the tenancy terminates automatically by effluxion of time or the operation of law, as the term is certain. The only notice to be served on such tenant is the notice of owner's intention to apply to court to recover possession. See section 7 of the Recovery of Premises Act. In ***Chemiron Int'l***

Ltd. v. Stabilini Visinoni Ltd (2018) 17 NWLR (Pt. 1647) 62 at p. 77, paras. C-F, the Supreme Court held *inter alia* that "***…since the tenancy of the appellant was for a certain term of 3 (three) years, it was not necessary to serve a notice to quit before initiating a recovery of premises action by virtue of section 7 of the Recovery of Premises Law of Lagos State.***" In ***Abdulaziz v. Garba (2021) 3 NWLR (Pt. 1764) 379 at p. 395, paras. B-C*** the Court held that "***A lease or tenancy for a fixed term automatically determines when the fixed term expires. Quit notice is usually obviated in the case of a fixed tenancy since the term of expiration is normally known; unlike periodic tenancies that continues automatically from period to period until it is determined by a notice to quit***.".

On the other hand, the tenant of a periodic tenancy is entitled to the service of a notice to quit. This is because the tenancy, being a periodic tenancy, revolves and renews automatically. See ***Abdulaziz v. Garba (2021), supra***. To this end, therefore, it must be terminated by a notice to quit. This is even so where the tenant of a periodic tenancy fails to pay the rent reserved for the property. In such case, the tenant becomes a tenant at will. A tenant at will is entitled to a notice to quit whose length is seven days. Section 8(1) provides the various lengths of notice appropriate for the different types of tenancy. The said section provides that:

> "***Where there is no express stipulation as to the notice to be given by either party to determine the tenancy, the following periods of time shall be given –***

(a) In the case of a tenancy at will or a weekly tenancy, a week's notice;

(b) In the case of a monthly tenancy, a month's notice;

(c) In the case of a quarterly tenancy, a quarter's notice;

(d) Subject to subsection (2) of this section, in the case of a yearly tenancy, half a year's notice."

In ***Odutola v. Papersack (Nig.) Ltd (2006) 18 NWLR (Pt. 1012) 470***, the Court held that any notice to quit served on the tenant of a fixed tenancy or a tenant at will is an act of surplussage, as what such tenant is entitled to is only the notice of owner's intention to apply to recover possession. This is consistent with the provisions of section 7 of the Recovery of Premises Act. It is for this reason I discountenance the submissions of the Defendant's Counsel that the notices served on the Defendant is defective. It is my considered opinion, and I so hold that as a tenant of a fixed tenancy, the only notice the Defendant was entitled to is **Exhibit C1** (Claimant's exhibits) which is same as **Exhibit G1** (Defendant's exhibits), that is, the Notice of Owner's Intention to Apply to Recover Possession dated the 19th of January, 2021.

I am not ignorant of the averments of DW1 in his witness statement on oath and the strident legal argument of the Counsel for the Defendant that since the Defendant's tenancy began on the 31st of January of each tenancy period and terminated on the 30th of Januaryof the tenancy period two years hence, the

service of **Exhibit C1** (**Exhibit G1**) was incompetent as it was served, according to him, during the pendency of the tenancy. The Defendant's position is founded on the fact that the tenancy period of 2012 through to 2014 began on the 31st of January, 2012 and terminated on the 30th of January, 2014. I have noted in my resolution of Issue One that each tenancy period from 2012 constituted a different, separate tenancy agreement distinct from and independent of the others. Thus, while it is correct to presuppose that the tenancy period of 2012 to 2014 began on the 31st of January, 2012 and terminated on the 30th of January, 2014, same cannot be said of the tenancy period of 2019 to 2021 which, as can be seen from the express and unambiguous provisions of the tenancy agreement for that period admitted in evidence and marked as Claimant's **Exhibit A1 – A6**, began on the 13th of January, 2019 and terminated on the 12th of January, 2021.

Since that is the case, I hold, without any scintilla of equivocation, that the Claimant complied with and satisfied all the conditions precedent necessary to the commencement of a suit for recovery of premises. The arguments of learned Counsel for the Defendant to the contrary are of no moment and are hereby discountenanced. Issue Two is hereby resolved in favour of the Claimant.

In resolving Issue Three, I note with clarity that the Defendant/Counter-Claimant seeks a number of declaratory reliefs, four in all, in its Counter-Claim. In addition to these declaratory reliefs, the Defendant/Counter-Claimant is seeking certain orders, flowing from the declaratory reliefs. I have reproduced the reliefs which the Defendant/Counter-Claimant seeks in its Counter-Claim. In support of his claims,

the Defendant/Counter-Claimant relied on the averments in the Witness Statement on Oath of DW1.

Declaratory reliefs are equitable reliefs which are granted by the Court in the exercise of its discretionary and equitable jurisdiction. They are reliefs whereby the Court pronounces on what it considers the true state of affairs between the parties before it upon a meticulous evaluation of the evidence placed on both side of the imaginary scale. In ***Akande v. Adisa (2012) 15 NWLR (Pt. 1324) 538 S.C. at 571, paras. A-C***, the apex Court held that"***The purpose of a declaratory action is essentially to seek an equitable relief in which the plaintiff prays the court in the exercise of its discretionary jurisdiction to pronounce, or declare an existing state of affairs in law, in his favour as may be discernible from the averments in the statement of claim. In order to be entitled to a declaration, a person must show evidence of a future legal right subsisting or in the future and that the right is contested. What would entitle a plaintiff to a declaration is a claim which a court is prepared to recognize and if validly made it is prepared to give legal consequence.***"

Whoever that seeks declaratory reliefs must succeed on the strength of their own evidence and not on the weakness of the other party's case. In ***Akande v. Adisa (2012) supra, at 571, paras. C -E***, the Court held that "***A declaratory action is discretionary in nature. Therefore, the onus of proof lies on the party claiming and he must succeed on the strength of his own case and not on the weakness of the defence except where the case for the defence supports his case***."

It is on the basis of the evidence before me that I resolved the preceding two issues in favour of the Claimant. Having resolved the preceding two Issues in favour of the Claimant on the basis of the evidence before me, which evidence preponderates in favour of the Claimant, it follows therefore that the evidence left on the Defendant/Counter-Claimant's side of the imaginary scale of justice is not enough to sustain the Counter-Claim of the Defendant/Counter-Claimant. Issue Three is accordingly resolved in favour of the Claimant/Defendant to the Counter-Claim and against the Defendant/Counter-Claimant.

Having resolved all the issues herein formulated in favour of the Claimant, what are left to be decided are the questions of award of general damages, the cost of the action as well as post-judgment interest at the rate of 10% per annum. Parties through their respective Counsel have argued vigorously on the propriety of awarding the above heads of reliefs sought by the Claimant. It should be pointed out here that general damages are awarded upon the determination of a case by the Court in the exercise of its discretionary power. In other words, general damages are compensatory in nature. In **Toyinbo v. Union Bank Plc(2023) 1 NWLR (Pt. 1865) 403 S.C. at *428, paras. C-D***, the Court held that **"*The term 'damages' connotes money usuallyclaimed by, or ordered to be paid to a person ascompensation for loss or injury. Damages arethe sums of money which a wronged individualis entitled to receive from the wrongdoer as acompensation for the wrong.*"**

This discretionary power is exercisable judicially and judiciously upon a careful consideration of the facts and circumstances of each case. See**Vital Inv. Ltd. v.**

CAP Plc(2022) 4 NWLR (Pt. 1820) 205 S.C. at 261, paras E – G and ***G.K.F. Investment Nigeria Ltd v. Nigeria Telecommunications Plc (2009) 15 NWLR (Pt. 1164) 344 S.C. at 384, paras E – F*.** Thus, as factual circumstances differ from case to case, so also do the Court's attitude to the award of damages also differ. In other words, no one factual circumstance can serve to guide the Court in the exercise of its discretionary powers in this regard.

I have reflected on the circumstances of this case and I believe that this Court is justified if it awards general damages in favour of the Claimant and against the Defendant in this case.

On the issue of post-judgment interest at the rate of 10% per annum, it must be stated here that the Rules of this Court in Order 39 Rule 4 of the Rules of this Court, 2018 makes provision for the award of post-judgment interest at a rate not higher than 10% against a Judgment Debtor. The Courts have pronounced on the imposition of a post-judgment interest on the judgment debt. On when a court can make an order for post-judgment interest, the Court held in ***Africa Prudential Registrars Plc v. Macaulay(2020) 18 NWLR (Pt. 1755) 1C.A. at 31, paras A – B***that "***For there to be post-judgment interest, there must first be a monetary judgment on which the order for interest would be made until the judgment sum is liquidated***." This Court will, therefore,not be in error if it makes an award of post-judgment interest on the judgment debt.

On whether the head of relief for cost is appropriate, I am not oblivious of some decisions of the courts above whose purport is to discourage the practice whereby

Claimants agglutinate a relief for cost of action to the other reliefs being sought in the originating process. I, however, believe that costs follow events. I am fortified in this position by the following decisions of the Courts above on this subject: See, for instance, the following cases: ***Theobros Auto-link Ltd. v. Bakely International Auto EngineeringCo. Ltd(2013) 2 NWLR (Pt. 1338) 337 C.A. at 355, paras G – H;Yakubu v. Min., Housing & Environment, Bauchi State(2021) 12 NWLR (Pt. 1791) 465 C.A at 485, paras B – E; A-G., Kwara State v. Alao(2000) 9 NWLR (Pt. 671) 84 C.A. at 05, paras G – H*.

In all, this suit succeeds, the entitlement of the Claimant to the reliefs having being established by a preponderance of credible and cogent evidence. Accordingly, the reliefs sought in the Writ of Summons and Statement of Claim are hereby granted as follows:-

a. **The Defendant is hereby ordered to deliver immediate vacant possession of the Claimant's property with its appurtenances thereto at No. 43 Adetokunbo Ademola Crescent, Wuse II, Abuja to the Claimant, the fixed tenancy of two years certain having terminated by effluxion of time on the 12th day of January, 2021 being the eve of the anniversary of the tenancy created on the 13th day of January, 2019.**
b. **The Defendant through its Counsel having paid the sum of ₦42,166,652.00 (Forty-Two Million, One Hundred and Sixty-Six Thousand, Six Hundred and Fifty-Two Naira only) to the Claimant to cover the period from 12th of January, 2021 to the 21st October, 2022, the Defendant is hereby ordered to pay the Claimant all the *mesne***

profit which has accrued on the Claimant's property with its appurtenances thereto at No. 43 Adetokunbo Ademola Crescent, Wuse II, Abuja from 22nd day of October, 2022 till the date it delivers vacant possession of the said property to the Claimant.

c. **The Defendant is hereby ordered to pay to the Claimant the sum of ₦1,000,000.00 (One Million Naira only) to the Claimant as general damages.**

d. **The Defendant is further ordered to pay to the Claimant the sum of ₦1,000,000.00 (One Million Naira only) as cost of this action.**

e. **This Honourable Court hereby awards 10% post-judgment interest *per annum* on the judgment sum from date of judgment till the entire judgment debt is fully liquidated.**

Conversely, the counter-claim of the Defendant/Counter-Claimant fails and is accordingly dismissed. All the reliefs sought by the Defendant/Counter-Claimant in its counter-claim are hereby dismissed.

This is the Judgment of this Court delivered today, the 30th day of March, 2023.

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HON. JUSTICE A. H. MUSA
JUDGE
30/03/2023

APPEARANCES:
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