

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE

9TH DAY OF MAY, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/CV/2216/2016

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

DOO PETROLEUM COMPANY LIMITED }
Suing in the name of its Attorney }
MR. FRANK AMADI } **CLAIMANT**
(Doing business under the name and }
style of **FRANK AMADI & PARTNERS**) }

AND

HAJIYA HALIMA MOHAMMED GAMBO DEFENDANT

JUDGMENT

The Claimant's case against the Defendant initiated vide its Writ of Summons and Statement of Claim dated and filed on the 22/07/2016 is for the following:

- (1) A Declaration of Court that the Defendant is under obligation to carry out repairs on the demised property situate at House 5, Plot C2, Sigma Estate,

Jabi, Abuja in line with the Schedule of Repairs and to invite the Claimant thereafter for inspection of such repairs.

- (2) An Order of Court directing the Defendant to carry out repairs on the demised property situate at House 5, Plot C2, Sigma Estate, Jabi, Abuja in line with the Schedule of Repairs and hand over immediate vacant possession of same to the Claimant.

IN THE ALTERNATIVE

- (i) An Order directing the Defendant to pay the Claimant the sum of ₦268,300.00 only being the estimated cost of repairs occasioned by her occupation of the demised premises.
- (ii) An Order directing the Defendant to pay Claimant the sum of ₦1,333,333.33k being the arrears of rent from 15th of May, 2016 to date.
- (iii) Mesne profit at the rate of ₦666,666.67k for each month from date till the day the Defendant hands over vacant possession.

- (iv) ~~₦~~2 Million for general damages.
- (v) Cost, disbursement and Counsel fees.

And for such Order or further Orders as the Court may deem fit to make in the circumstances.

The Defendant was served with the Originating process. She filed a Statement of Defence and Counterclaim wherein she claims:

- (1) The refund of ~~₦~~800,000.00 agency fee wrongly received by the Claimant for the second year tenancy.
- (2) The refund of ~~₦~~850,000.00 being Air-Conditioner bought by the Defendant in the house.
- (3) The refund of ~~₦~~1 Million being cost of gas-cooker which the Defendant bought and used in the house.
- (4) The refund of ~~₦~~4 Million being the cost of structural repair, painting, mosquito net, burglary proof in the house.

The Claimant also filed a Reply to Statement of Defence and Defence to Counterclaim. The Claimant called only one (1) witness in proof of his case. He is Francis Amadi.

He stated that he is the Claimant. He is an Estate Surveyor and Valuer, a Legal Practitioner and an Attorney and agent of DOO PETROLEUM COMPANY LTD, Owners/Landlord of the 5-Bedroom Luxury Duplex with Servant Quarters located at Sigma Estate, Jabi, Abuja upon a Power of Attorney donated to him for the management and letting of the property.

He said he made two depositions on 22/07/2016 and 27/02/2018. He adopted them as his evidence. In the said Statements, he deposed that the Defendant is a tenant at the property described above.

That in April 2013, his office made an offer of 2 years certain tenancy of the said 5-Bedroom Luxury Duplex with Servant Quarters located at Sigma Estate, Jabi,

Abuja which terms the Defendant duly accepted on 29/04/2013.

A Tenancy Agreement was executed in respect of the property for ₦16 Million (only ₦8 Million annually) for a period of 2 years commencing from the 15th day of May 2013.

It is a new building constructed by Julius Berger Plc. The Defendant inspected the property in his presence and confirmed the condition as contained in the Schedule of Inventory of Fittings/Conditions and signed together with the Certification of Schedule of Inventory of Fittings/Conditions of the demised property as attached.

The Defendant took possession and occupied property without any complaint of defect whether structural or fittings except for the point leakage reported by the Defendant over the telephone, which issue was fixed on the same day. The only time the Defendant did any work

was when she changed burglary proof to security door which was in writing.

That about a month before the expiration of the two year term, he wrote the Defendant notifying her of the expiration of her tenancy and indicated willingness to renew same for another two years on the reserved rent of ₦8 Million per annum, but rather the Defendant opted to renew the tenancy for a term of one year at the rate of ₦8 Million.

That the Defendant explained her economic situation to him and made a part-payment of ₦4 Million only leaving a balance of ₦4 Million which she undertook to pay within the first few weeks of the renewed term.

The Defendant repeatedly assured him that she would pay the said rent and wrote a letter through her Counsel confirming her willingness to pay the balance of her rent and continue with her tenancy.

In the same letter, Defendant's Counsel made spurious assertions alleging imaginary structural damages during the rainy season, illegality over the negotiated and agreed agency fees paid by the Defendant at the commencement of the relationship.

The Defendant was served with a 7-Day Notice of the termination of the tenancy in accordance with the Tenancy Agreement. That he replied the Defendant's lawyers later.

The Defendant later approached him and pleaded for time to pay the outstanding rent and explained she was under financial pressure.

He served her with 6-Month Quit Notice within which period she was expected to pay up the balance of her outstanding rent. That he also served her another letter reminding her of her contractual obligation to put the property back on the condition she rented it in line with the Schedule of Fittings. He also reminded her of the

need for a joint inspection of the property before she hands over possession.

That following a lot of calls from the Defendant, he met the Defendant on 13/05/2016 wherein the Defendant pleaded for time to enable her pay the outstanding rent.

After the meeting, he wrote another letter dated 16/05/2016. That contrary to the Tenancy Agreement, written undertaking and representation by the Defendant, the Defendant vacated the property sometime in June 2016 without the required inspection and refused to carry out repairs occasioned by her occupation of the property.

The Defendant only called him that she had moved out. That he carried out a joint inspection of the property with her lawyer and took inventory and cost estimate of repairs.

That he wrote a letter to Defendant through her lawyer to which the cost estimate for the repairs stood at ₦268,300.00 was attached. The Defendant had the option of fixing the property or pay the estimated cost of repairs.

The Defendant's lawyer wrote alleging that repairs have been carried out without inviting him to inspect the repairs contrary to laid down procedure. He enclosed the keys in a letter dated 28/06/2016.

The Defendant's lawyer in a letter requested for a refund of ₦800,000.00 alleged to be excess agency fees owed the Defendant and also alleged that Defendant spent ₦5 Million in fixing structural defects stating that as such the Defendant is not owing any money.

That he wrote the Defendant's lawyer expressing his dismay and the crude tactics employed by him to evade Defendant's contractual obligations. That despite the foregoing, the Defendant has failed to pay her

outstanding rent of ~~N4~~ Million and the additional sum of ~~N999,999.99~~ being a *pro rata* rent as at the end of June 2016. That Defendant has also not handed over vacant possession. He urges the Court to enter judgment in favour of the Claimant.

The Defendant tendered Exhibits A - A13 which are:

- (1) Power of Attorney.
- (2) Letter from Claimant to tenant.
- (3) Tenancy Agreement.
- (4) Receipt by Claimant to Defendant for N8 Million.
- (5) Letter seeking permission to change burglary written by Defendant.
- (6) Letter from Defendant's Counsel dated 11/12/2015.
- (7) Letter from Claimant addressed to Defendant's Counsel.
- (8) Quit Notice by Claimant dated 22/01/2016.
- (9) Letter from Claimant to Defendant titled -
Re: Schedule of Fittings and Conditions of Property dated 27/01/2016.

(10) Letter from Claimant to Defendant dated 16/05/2016 titled - Vacant Possession and Outstanding Rent of ~~₦4~~ Million and Mesne Profit.

(11) Copy of letter from Claimant to Defendant dated 16/06/2016.

(12) Letter from Defendant's Counsel to Claimant.

(13) Letter from Claimant's Counsel to Defendant's Counsel.

Under Cross-Examination, the witness answers that the Defendant packed out of the house on 1/08/2016. That tenant took possession on the 15/05/2013.

On a further question, he answered that the rent is ~~₦8~~ Million per annum. That she paid ~~₦8~~ Million on the first rental year 2013 - 2014 and paid ~~₦4~~ Million in two instalments, 2014 - 2015, the 3rd year she paid only ~~₦4~~ Million in the 2015 - 2016 rental year and did not pay balance until she packed out.

To a question, he answered that she paid agency fee only once as prescribed by the Offer Letter. The Defendant did not complain of any structural defect. That she did not write him of any repairs throughout the duration of her tenancy.

He answered that the property was fully fitted with A/C, gas-cooker, etc. That the air-conditioners never got spoilt. That when the Defendant left, she did not renovate the property. He denied that Defendant bought a new cooker. She got notice and vacated.

To a further question, he said the house has been rented. That the fittings are now working. They are fitted. That after waiting for the Defendant to renovate and she refused, he sent his staff to collect the key on 1/08/2016. The above is the case of the Claimant.

The Defendant called a witness in her defence. He is Ali Adamu. He is the Manager in Marlina Catering Services owned by the Defendant. He remembers making a

Statement on Oath, which he swore to in his lawyer's office. He adopted same as his oral testimony.

That all transactions from tenancy and repairs, buying and installation of new equipment were supervised by him. That when Defendant entered the house, he reported that the A/Cs were not working well and she said she would inform Claimant.

A technician came to repair the Air-conditioners but it was not properly done. That Defendant bought five (5) Air-conditioners and removed the Claimant's.

That the house was leaking profusely. That she also bought a gas-cooker because the one in the apartment was not working and could not be repaired. That he invited technicians that repaired a lot of structural defects.

He obtained receipts which he handed over to the Defendant. She removed her burglary proof and put back

their door as it were when she entered. The witness tendered Exhibit B.

Under Cross-Examination, the witness answered as follows:

He signed the Witness Statement on Oath in his lawyer's office. That he knows Defendant signed Tenancy Agreement before she entered the premises. He is not aware she did inspection. That he did the inspection.

He does not know anything about Schedule of Inventory signed by the Defendant. He cannot recall the number of Air-conditioners in the property. He does not know if Claimant gave permission to Defendant to change A/Cs.

That there was a leakage in the master bedroom close to her bed. It took him 2 years to repair same. That the nets were not moving. That Defendant changed them.

To a question he answered that the Defendant gave an undertaking not to remove the burglary, switches and fittings.

The Claimant's Final Written Address is dated 21/01/2022 but filed on the 24th. He adopted same as his oral argument. He posited two issues for determination.

- (1) Whether the Claimant has not adduced sufficient evidence to be entitled to the reliefs sought.
- (2) Whether the Defendant's Counterclaim is not bound to be dismissed.

Learned Counsel submits that the Claimant has adduced sufficient evidence to be entitled to the reliefs sought. That Claimant's evidence is cogent and not contradicted. That parties are bound by the terms of their contract. That there is no evidence to support the Defendant's Counterclaim.

The Defendant did not lead evidence. That DW1 who gave evidence for the Defence is not a party to the contract and cannot give credible evidence on same. That the Statement on Oath of the DW1 failed to comply with Section 117 (4) of the Evidence Act. It was not

signed before the Commissioner for Oath. It is therefore incompetent.

Learned Counsel to the Claimant urges the Court to dismiss the Counterclaim and grant the reliefs in the claim.

I have read the evidence and considered the Written Address of Claimant's Counsel. This is a case of landlord and tenant governed by Exhibit A2 between DOO PETROLEUM COMPANY LIMITED suing in the name of its Attorney, MR. FRANK AMADI as Claimant and HAJIYA HALIMA MOHAMMED GAMBO as Defendant. Both parties executed the agreement.

Exhibit A is the Power of Attorney. Exhibit A1 is the Offer of two years certain tenancy. Exhibit A3 is the Receipt of Payment of ₦8 Million for the first term.

I have also read Exhibits A5 - A12. Exhibit A13 is a Schedule of Inventory of Fittings/Conditions of the

demised property, i.e. 5-Bedroom Terrace Duplex and Servant Quarters at Sigma Estate, Jabi, Abuja.

The Defendant certified that all the keys, fittings, doors and walls of the 5-Bedroom Terrace Duplex and Servant Quarters at Sigma Estate, Jabi, Abuja, the demised property have been inspected by her and are found to be in good and tenantable condition.

She further covenanted in the said certification that she will put all the above fittings and the interior of the duplex in the same good condition. The fittings include Air-conditioners listed as No. 6, 16, 24, 39, 49, 73, 85, 95, 104, 132, 158 in the Schedule of Inventory.

The law is that written contract as in this case entered into by parties is binding on them. Where there is any disagreement between the parties to such written agreement in any particular point, the only reliable evidence and legal source of information to resolve same is the written contract executed by the parties.

The evidence of the Claimant's witness is unassailable. It is cogent and convincing. The exhibits tendered are impeccable. The evidence of the Claimant is not controverted. I believe same.

The Claimant has therefore proved its case on the preponderance of evidence and balance of probability so as to entitle him to judgment.

The Defendant/Counterclaimant failed to give evidence in support of her defence and Counterclaim despite all opportunities.

The DW1 who gave evidence adopting his Written Statement on Oath did not sign the Written Statement before a Commissioner for Oath as admitted by him in evidence. He said both under his evidence in-chief and cross-examination that he signed the deposition in the office of his lawyer.

Section 112 of the Evidence Act states that an Affidavit shall not be admitted which is proved to have been sworn before a person in whose behalf the same is offered or before his Legal Practitioner or before a partner or Clerk of his Legal Practitioner.

The DW1's Statement on Oath signed before his Legal Practitioner or Clerk is not only irregular but illegal. I shall therefore refuse to admit it as evidence.

Even if the said Affidavit is admitted as competent, it did not offer any defence to the claim neither is the Counterclaim proved. There is no evidence to suggest that any structural defects were repaired. Even if any such structural defects were carried out, no approval for such repair is sought and obtained by the Defendant.

There is no evidence to prove any agency fee wrongly received by the Claimant. The Schedule of Inventory of Fittings and Conditions show the provision in Nos. 33, 34 and 35, gas/electric gas cooker.

The Defendant signed that they are in good and working condition. The schedule of repairs carried out is Exhibit A10. There is no evidence to show that the Defendant complained in writing. The complaints of the Defendant seem to begin surfacing at the twilight of her tenancy after the Claimant's demand for ~~N4~~ Million balance of outstanding rent.

The DW1 is not a party to the agreement. His evidence is not credible. In my view, the Defendant failed to prove her Counterclaim and it is accordingly dismissed for lack of merit.

Reliefs (IV) and (V) are not clear. The date the arrears of rent begins and ends must be clear. They cannot therefore be granted. They are refused.

No pecuniary loss accrued to the Claimant as a result of the tenancy. The Claimant has been adequately reimbursed. Prayer (IV) for general damages also fails.

In totality, the claim succeeds. Judgment is entered in favour of the Claimant against the Defendant as follows:

1. The Defendant shall pay Claimant the sum of ~~₦~~268,300.00k being the estimated cost of repairs occasioned by her occupation of the demised premises.
2. The Defendant is further ordered to pay to the Claimant the sum of ~~₦~~4,000,000.00 (Four Million Naira) being balance of her rent from 15th May 2015 to 14th May 2016.
3. ~~₦~~1,333,333.33k being arrears of rent from 15th May 2016 till date.
4. Cost is assessed at ~~₦~~250,000.00 (Two Hundred and Fifty Thousand Naira).

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
09/05/2023

Parties absent.

K. K. Ogbonnaya, Esq. for the Claimant.

COURT: Judgment delivered.

(Signed)
HON. JUDGE
09/05/2023