

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT HIGH COURT 20 GUDU - ABUJA**  
**DELIVERED THURSDAY THE 8<sup>TH</sup> DAY OF JUNE, 2023.**  
**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE.R. OSHO-ADEBIYI**  
**SUIT NO. FCT/HC/CV/1529/2021**

**BETWEEN**

**1.DR. TIM NDA DICHE..... CLAIMANTS**  
**2. HAK & DICH PROPERTY DEVELOPMENT COMPANY LIMITED**  
**AND**

**1.MEDIMAX HOSPITAL LIMITED ..... DEFENDANTS**  
**2.DR. MAXSWELL ODIEGWU**

**JUDGMENT**

The Claimants filed this suit on the 9<sup>th</sup> day of July 2021 against the Defendants, praying the Court to the following reliefs:

1. A DECLARATION that by the Defendants' serial breaches of covenants contained in the Lease Agreement dated 5<sup>th</sup> January 2020 evidenced by its lack of capacity to pay the yearly lease sum in full and service of Seven Days' Notice to Quit by the Claimants on the 1st Defendant, the Lease Agreement dated 5th January 2020 between the Claimants and 1st Defendant is forthwith terminated.
2. AN ORDER of the Honourable Court directing the Defendants to deliver vacant possession of the property described as Plot 555 Adjacent Old Federal Secretariat, Durumi, Area 1, Garki Abuja to the Claimants on or before 30th March 2022.
3. AN ORDER of the Honourable Court directing the Defendants to pay mesne profit assessed at the sum of N41,100.00 (Forty-one Thousand

One Hundred Naira) per day from 31st March 2022 till date of delivery of vacant possession of the property to the Claimants.

4. AN ORDER of the Honourable Court directing the Defendants to restore all the interior and exterior parts of the property altered during its period of occupation of the property to its original state and condition within 14 days from date of delivery of judgment in this suit.
5. AN ORDER of the Honourable Court directing the Defendants to pay to the Claimants the sum of N1,500,000.00 (One Million Five Hundred Thousand Naira) as cost of this legal action.

The brief facts that gave rise to this suit is that Defendants approached the Claimants for a lease of their property for a period of 10 years, but the Claimants offered them a lease term of 5 years with option of renewal. That parties agreed for payment of the lease sum of N15,000,000.00 (Fifteen Million Naira) on an annual rent basis for the duration of the five (5) years lease term and a Lease Agreement was executed between the 1st Claimant and the 1st Defendant on 5th January 2020. That the covenants contained in the Lease Agreement were for the Defendants to pay the 2020 rent in three instalments of N8,000,000.00 on or before 6th January 2020, N2,000,000.00 on or before 30th January 2020 and N5,000,000.00 on or before 30th September 2020 and subsequently to pay the lease sum of N15 000 000.00 in full on or before 30th March of each succeeding year till 2024. Claimants have now alleged that the Defendants have breached their obligations under the Lease Agreement, including breaching Clause 4 (ii), 5 (i), (ix) and (xii) of the Lease Agreement and making various alterations to the Property without the prior written consent of the Claimants. That the Defendants have also breached Clause 5 (ii), 5 (i), (ix) and (xii) of the Lease Agreement and made various alterations to the Property without the prior written consent of the Claimants, hence Claimant invoked Clause 7 (i) and

(vii) of the Lease Agreement and served the 1st Defendant with a Seven (7) Days' Notice to Quit the Property in order to recover the Property from the Defendants. That the Defendants' failure to make full payments for the annual lease sum of the Property has put the Claimant in a precarious financial position hence this suit.

Upon being served with the Claimants processes, the Defendants filed their statement of defence and accompanying processes. Parties having exchanged pleadings, the case proceeded to trial with the Claimants calling one witness to testify in proof of their case. The 1<sup>st</sup> Claimant testifying as PW1 adopted his witness statement on oath as his evidence in this case and tendered the following documents which were admitted into evidence as follows: -

- (1) Notice to quit dated 23/4/2021 as **Exhibit A**
- (2) Lease Agreement between 1<sup>st</sup> Plaintiff and 1<sup>st</sup> Defendant as Exhibit B
- (3) Letter from 1<sup>st</sup> defendant dated 26/4/2021 titled notice of installment payments of rents as **Exhibit C**
- (4) Receipts from law firm of Temple and Shield dated 23/6/2021 for the sum of N500k being part payment of legal fees of N1,500,000.00 as **Exhibit D**
- (5) Letter from Temple and Shield Attorneys addressed to the defendant dated 31/3/2021 demanding for payment of N15million outstanding rent as **Exhibit E**
- (6) Letter from Temple and Shield Attorneys addressed to defendant dated 7/4/2021 titled "Termination of Lease agreement and notice of lessors intention to recover possession..." as **Exhibit F**
- (7) Letter from Hak and Dich Property Company Limited dated 28/2/2021 addressed to defendant as **Exhibit G**

Under cross-examination, Plaintiff maintained that the tenancy between the parties is meant to expire on the 31<sup>st</sup> of March 2022. That the Notice to quit was served on the Defendants and that parties signed one lease agreement for 5 years in January 2020. That he cannot recollect signing any other agreement for 10 years. PW1 further stated under cross examination that at the time the property was leased, there was no power supply in the building, and he is not aware there is a transformer in the building. That the Defendants informed him that the property was to be used for hospital business.

At the close of the Claimant's case, the Defendant opened their defence calling a sole witness, the 1<sup>st</sup> defendant. The DW1 adopted his witness statements on oath as evidence. Under cross examination, DW1 maintained that the commencement date of the lease is 31<sup>st</sup> March 2020. That the building was roofed, plastered, fenced, tiled, with fitted windows, and painted but they still had to put the property in a usable state by rewiring the entire building. That he owes the sum of 15 million naira to the plaintiff. The defendants through the PW1 tendered the following documents in evidence: -

- (1) Letter from Kachi Okpara dated 21<sup>st</sup> September 2021 **Exhibit H1**
- (2) Letter from Kachi Okpara dated 29/6/2020 **Exhibit H2**
- (3) Letter from Kachi Okpara dated 9/2/2020. **Exhibit H3**
- (4) Letter from Kachi Okpara dated 26/8/2020. **Exhibit H4**
- (5) Letter from Kachi Okpara dated 17/12/2020. **Exhibit H5**
- (6) Letter from Kachi Okpara dated 17/12/2020. **Exhibit H6**
- (7) Letter from Kachi Okpara dated 6/10/2020. **Exhibit H7**
- (8) Letter from client dated 16/6/2020. **Exhibit H8**
- (9) Letter from Ditch Mark Insurance Brokers Ltd dated 4/1/2021. **Exhibit H9**

(10) Letter from Hark and Ditch property Development dated 26/4/2021.

**Exhibit H10**

(11) Letter from Temple and Shield dated 31/3/2021. **Exhibit H11**

(12) Letter from Hark and Ditch property development dated 2/6/2021.

Exhibit H12

(13) Letter from Temple and Shield dated 14/12/2021. Exhibit H13

(14) Letter from Temple and Shield dated 7/4/2021. Exhibit H14

(15) Letter dated 9/6/2020 from Medimax. Exhibit H15

At the close of the case, the court ordered parties to file their written address. The Defendants from their written address filed, raised the following issues

1. Whether this court can assume jurisdiction over this suit as presently constituted and determine same when there was no known cause of action at the time the claimant instituted the suit.
2. Whether the court is competent in the instant case can assume jurisdiction and determine this case considering the rights of the 2nd claimant and the 2nd defendant who were not parties to the lease agreement between the is claimant and 1st defendant which is the subject matter of this suit.
3. Whether the claimants are entitled to the grant of the relief sought for in this instant suit.

Arguing the first issue, defendants counsel submitted that there is no cause of action, as no cause of action had arisen at the time this suit was filed. Submitted that the prayers of the claimants are futuristic and that at the time the suit was filed that is on the 9th of July 2021, the rent was due to expire on the 30th of March 2022 and urged the court to so hold.

Arguing the second issue, counsel submitted that the 2nd claimant and the 2nd defendant are not parties to the lease agreement which is the subject matter of this suit. Submitted that this court will be acting outside its

jurisdiction for failing to strike out the names of the 2<sup>nd</sup> Claimant and 2<sup>nd</sup> defendant and urged the court to strike out their names to arrive at a just determination of this case.

Arguing issue 3, Defendants Counsel submitted that the Claimants have not pleaded facts to justify the grant of the reliefs sought as they have failed to prove that there was breach of contract. Submitted further that the subject matter of this suit is on recovery of possession and the first claimant has not complied with the requirements of section 10 of the recovery of premises act cap 544 LFN Abuja. Submitted further that the claimants cannot be entitled to the grant of mesne profit for a tenancy that is still subsisting at the time the suit was filed. Counsel urged the court to dismiss the claims of the claimants in its entirety as same is speculative, premature, and an abuse of court process.

Upon receipt of the Defendants' address, the Claimants counsel filed their written address and raised the following issues: -

1. Whether the claimants rightfully terminated the lease agreement dated 5th January 2020 with regard to the 1st defendant's breach of its major obligation of rent payment to the 1st claimant as and when due and service of seven days' notice to quit the property on it.
2. Whether the claimants discharged the burden of proof and are entitled to award of the declaratory and other reliefs herein sought from the honourable court

Arguing issue one, Claimants' Counsel submitted that as a result of the breach of the major covenants and other covenants by the first Defendant, the Claimants rightfully terminated the Lease Agreement. Submitted that on the issue of cause of action, the cause of action arose upon the 1<sup>st</sup> Defendant's failure to pay the said rent on the 30th of March as agreed in Exhibit B (the agreement), and urged the court to hold that the steps taken by the 1st claimant for the recovery of his property from the first defendant

is in line with the intention of the parties in the lease agreement. Submitted further that the claimant's collection of the sum of 10 million naira for the 2021/ 2022 term from the defendants does not amount to a waiver of quit notice

and urged the court to so hold.

Arguing issue two, counsel submitted that claimants rightfully terminated the lease agreement. Submitted further that all through the evidence before this court, claimants have discharged the burden of proof placed on them to show that 1st defendant violated the obligation for a timely payment as well as engaged in alteration of the claimant's property without seeking to obtain claimant's approval in writing. Counsel finally submitted that defendants by not contradicting or denying the evidence of the claimants have admitted same as true and urged the court to act on it and enter judgment in favour of the claimants accordingly.

The Defendants filed a reply on points of law which I have read, and I must state that the purpose of a reply on points of law is not merely for reiterating submissions earlier made in the main address submissions, neither is it an avenue to raise any fresh issues and or to re-argue a point to merely have a second bite at the cherry. It is for answering fresh issues raised in the written address or arguments of the Claimant in this case, which were not covered by the submissions in the written address of Defendant and the Defendants reply lacks the intent of what a reply on points of law ought to be. Be that as it may, it shall be considered in this judgment.

I have carefully read and examined the facts and evidence of respective parties and the argument contained in the written address of respective counsel and two issues that call for determination in this suit as follows: -

1. Whether this suit is competent to clothe this court with jurisdiction to entertain same.

2. Whether the claimants have proved their case to be entitled to the reliefs sought.

Dealing with issue 1 which is, "whether this suit is competent to clothe this court with jurisdiction to entertain same." The defendants in their written address filed, contended that at the time of filing this suit, no cause of action had arisen for this court to be called upon to determine. The claimants on their part contended that the cause of action arose upon defendants' failure to pay their rent as and when due.

The law is very well settled that cause of action is the entire set of circumstances which give rise to an enforceable claim and to determine whether or not there exists cause of action, the writ of summons and the statement of claim should be the documents to examine. The Supreme Court in the case of **USENI v. ATTA & ORS (2023) LPELR-59880(SC) (Pp. 39 paras. E)** Per **JAURO, J.S.C** in **(Pp. 39 paras. E)** held thus

*"A Plaintiff's cause of action accrues the moment there is a Defendant to sue, when all the combination of facts giving rise to an enforceable claim crystallize, on the date on which the incident giving rise to the cause of action occurs."*

Also, Per **AUGIE, J.S.C** in **FOLARIN V. AGUSTO (2023) LPELR-59945(SC)** at **(Pp. 34-35 paras. E)** held

*"It is an elementary principle of law that to ascertain a cause of action, the immediate materials a Court should look at are the Writ of Summons and the averments in the Statement of Claim. See Dantata V. Mohammed (2000) 7 NWLR (Pt. 664) 176 and Abubakar V. Bebeji Oil and Allied Products Ltd. (2007) 18 NWLR (Pt. 1066) 319, wherein this Court further observed that - "It is by examining them that a Court can satisfy itself on the actual grouse of a Party, and*

*the remedy or relief it is seeking from the Court. After determining the cause of action then by the very averments, the Court can discern the time that a cause of action arose."*

In this instant case, to determine whether or not there exists a cause of action, the claimant's writ and statement of claim will be examined. In this instant case, the claimant in relief one from the writ before this Court is seeking for a declaration that the lease be terminated as a result of serial breaches of covenants in the lease agreement by the defendants. Upon a cursory look at Claimant's statement of claim, the fact that gave rise to this suit can be seen from paragraphs 8, 9, 10, 11, 12 to 17. From the facts stated therein, it is clear that there is a cause of action which arose as a result of the alleged breach of contract between parties as seen particularly in paragraph 12 which states thus: -

**"Claimants aver that for the 2021 lease year whose payment was due by 30th March 2021, the Defendants have again breached the covenants of the Lease Agreement and have neglected, refused and or woefully failed to make payment as and when due despite several notices in writing to them and a scheduled meeting whereat the 2nd Defendant gave assurances of payment...."**

Going by the facts stated in the statement of claim, the cause of action accrued as a result of the alleged breach of the terms in the contract between the parties that is, Exhibit B. In my view, the claimants have successfully in their statement of claims set out the facts constituting the infraction of the legal rights of the claimants as well as states the failure of the defendants to fulfill their obligation which Claimants have called upon this court to seek remedy for the said infraction. As regards the issue of Claimant seeking for vacant possession of property on or before the 30<sup>th</sup> day of March, 2022, I will address this in the later body of this judgment.

The defendants are also contending that this court lacks jurisdiction to entertain this suit as the 2<sup>nd</sup> claimant and the 2<sup>nd</sup> defendant are not parties to the lease agreement which is the subject matter of this suit and ought not be made parties in the instant suit.

It is unchallenged and uncontroverted that the 2<sup>nd</sup> claimant and the 2<sup>nd</sup> defendant are not parties to the lease agreement but looking at evidence and exhibits before me the 2<sup>nd</sup> claimant and 2<sup>nd</sup> defendant are necessary parties to this suit. Necessary parties are those who are not only interested in the subject matter but who, in their absence the proceedings could not be fairly dealt with unless they are made parties.

In **CONTACT POINT VS PROGRESS BANK (1999) 5 NWLR (PT.604) PG 631 CA @ PG 634 Para A-B** the court held that: in determine whether a party is a necessary party the court must ask itself

(I) Is the party a person whose presence before the court will be necessary in order to enable the court to effectually and completely adjudicate or settle all the questions involved in the matter?

I have looked at the evidence before me, the pleadings which involves the claims and defence in this matter and the 2<sup>nd</sup> claimant together with the 2<sup>nd</sup> defendant played active roles all through this transaction. The 2<sup>nd</sup> claimants account number with Zenith Bank is conspicuously stated in the pleadings as the account where rent is to be paid and where rent was paid; correspondence from the 1<sup>st</sup> claimant was written several times on the letter head of the 2<sup>nd</sup> claimant, whilst letters were written to the defendant through Dr. Maxwell Odiegwu who is the 2<sup>nd</sup> defendant also there are exhibits before me where 1<sup>st</sup> defendant wrote letters to the 2<sup>nd</sup> claimant. Also, in Exhibit H15 which is a letter written by Medimax hospital to the 1<sup>st</sup> defendant, the 2<sup>nd</sup> defendant signed in his personal capacity and not on behalf of Medimax hospital which is a complete deviation from Exhibit C where the 2<sup>nd</sup> defendant signed on behalf of Medimax Hospital.

Another test to be applied in determining a necessary party is whether such party would be affected by the order of the court and I answer in the affirmative and hold that the joinder of the 2<sup>nd</sup> plaintiff and 2<sup>nd</sup> defendant to this suit is necessary in order for this court to effectually and completely adjudicate upon and settle all issues raised in this suit and I so hold.

The next issue to be determined is

**“Whether the claimant has proved his case to be entitled to the relief sought”.**

This issue will be determined vis a vis the reliefs sought by the claimant and will be dealt with serially. The claimant in relief one is seeking for a declaration that by the Defendants' serial breaches of covenants contained in the Lease Agreement dated 5<sup>th</sup> January 2020 evidenced by its lack of capacity to pay the yearly lease sum in full and service of Seven Days' Notice to Quit by the Claimants on the 1st Defendant, the Lease Agreement dated 5th January 2020 between the Claimants and 1st Defendant is forthwith terminated.

The law is very well settled that in an action where the relief is declaratory in nature, such as in this case, the claimants must satisfy the court by cogent and reliable proof of evidence in support of claimants claim. See the case of BULET INTERNATIONAL NIG. LTD & ANOR v. DR. MRS. OMONIKE OLANIYI & ANOR (2017) LPELR-42475(SC) where Per KEKERE-EKUN, J.S.C in (Pp. 29-30 paras. E) held thus;

*"A declaratory relief is never granted on the basis of admission or default of pleading. The party seeking declaratory reliefs has the burden of establishing his entitlement to such reliefs. He must succeed on the strength of his own case and not on the weakness of the defence, if*

*any, See: Wallersteiner Vs Moir (1974) 3 ALL ER 217 @ 251; Dumez Nig. Ltd V. Nwakhoba (2008) 18 NWLR (Pt.1119) 361; Bello V. Eweka (1981) 1 SC (Reprint) 63; Emenike V. PDP (2012) 12 NWLR (Pt.1315) 556."*

In this instant case with respect to the first relief two posers' beg to be answered: -

1. Is there a breach in the lease agreement by the defendant and has the claimant proved same?
2. is the service of the seven days' notice to quit, sufficient to determine the tenancy if indeed there was a breach?

In proof of claimant's case the claimant gave evidence that parties entered into a lease agreement with clear terms on how rent is to be paid for the first year and subsequent years. However, Defendant failed to make the payment as and when due. The claimant in the witness statement on oath in paragraph 12 and 13 to prove the breach of the terms stated thus: -

**"12. That for the 2020 lease year, the Defendants obviously showing no capacity to discharge its obligations under the Lease Agreement and after several letters of reminders paid the lease sum in five (5) installments of N8,000,000.00, N2,000,000.00, N2,000,000.00, N500,000.00, N2,000,000.00, N300,000.00 and N200,000:00 respectively from January 2020 to March 2021....**

**13. That for the 2021 lease year whose payment was due by 30th March 2021, the Defendants have again breached the covenants of the Lease Agreement and have neglected, refused and or woefully failed to make payment as and when due despite several notices in writing to them and a**

**scheduled meeting whereat the 2nd Defendant gave assurances of payment....”**

In proof, the claimant tendered the lease agreement, which was admitted into evidence as Exhibit B, which is Exhibit DW1, tendered by the defendant. The parties have pleaded and tendered different lease agreement before this court, the lease agreement is the bone of contention in this suit. I will at this point state that upon due comparison, both lease agreement before this court is signed and witnessed by same persons, that is the parties before this Court. Both agreements are essentially containing the same terms save for the duration of the lease as exhibit B's term is for 5 years while that of DW1 is for 10 years. Nevertheless, irrespective of the lease agreement before this court whether Exhibit DW1 or exhibit B, the issue in this case is on breach of the payment covenant/clause in the lease agreement. It will therefore be imperative to reproduce the terms relating to the mode of payment in both agreements as follows

Exhibit B, Clause 4

**“THE LESSEE HEREBY COVENANTS WITH THE LESSOR FOR PAYMENT OF THE LEASE AS FOLLOWS:**

- I. For the year 2020, Lease shall pay the lease sum of N15,000,000.00 in three instalment of:**
- i. N8,000,000.00 (Eight Million Naira) on or before the 6th day of January 2020;**
  - ii. N2,000,000.00 (Two Million Naira) on or before the 30th day of January 2020**
  - iii N5,000,000.00 (Five Million Naira) on or before 30th day of September 2020.**

**Receipt of payment of the above lease sum for 2020 is acknowledged by the Lessor with the issuance of a payment Receipt on receipt of the third and last installment.**

**For the Year 2021 to 2025, Lessee shall pay the annual lease sum of N15,000,000.00 (Fifteen Million Naira Only) for each year in full on or before the 30th day of March of such year till 2024.”**

Exhibit DW1 Clause 4

**“THE LESSEE HEREBY COVENANTS WITH THE LESSOR FOR PAYMENT OF THE LEASE AS FOLLOWS:**

**I. For the year 2020, Lease shall pay the lease sum of N15,000,000.00 in three instalments of:**

**i. N8,000,000.00 (Eight Million Naira) on or before the 6th day of January 2020;**

**ii. N2,000,000.00 (Two Million Naira) on or before the 31st day of January 2020**

**iii N5,000,000.00 (Five Million Naira) on or before 30th day of September 2020.**

**Receipt of payment of the above lease sum for 2020 is acknowledged by the Lessor with the issuance of a payment Receipt on receipt of the third and last installment.**

**II. For the Year 2021 to 2030, Lessee shall pay the annual lease sum of N15,000,000.00 (Fifteen Million Naira Only) for each year in full on or**

**before the 30th day of March of such year till  
2029.”**

Both clauses are essentially the same with difference in the dates, however the date for subsequent payment of rent commencing from the 2021/2022 remains the same for both agreements. The defendant on its part states that they are not in breach of any covenant of the lease agreement as they have substantially paid for the 2021-2022 lease with the first claimant which is still subsisting. I have earlier reproduced the rent clause from Exhibit B and Exhibit DW1 which stipulates the term of payment in the lease agreement and the law is that parties are bound by the terms of their contract willingly entered by them and the court must treat as sacrosanct the terms of a contract freely entered into by the parties as long as the contract does not carry any illegality. See the case of NIDB v. ROLISCO (NIG) LTD (2022) LPELR-58518(CA) where Per ADAH,J.C.A in (Pp. 13-14 paras. F)

*"It is worthy of note that parties to any contract are bound by the terms of their contract. The terms of the contract of the parties were agreed by them to govern their transaction. By the doctrine of sanctity of contract, each of the parties are required to stick to the terms and carry out their duties under the contract. See the cases of ABC (Transport Company) Ltd v. Miss Bunmi Omotoye (2019) LPELR - 47829 (SC), Idufueko v. Pfizer Products Ltd & Anor (2014) LPELR - 22999 (SC), AIB Ltd v. Integrated Dimensional System Ltd & Ors (2012) LPELR-9710 (SC), A.G.River State v. A.G. Akwa Ibom State & Anor., (2011) LPELR-633 (SC)."*

Now for there to be a breach as alleged by the claimant, the defendant must have acted contrary to the terms of the contract either by nonperformance, or by performing the set terms contrary to the terms stated in the agreement. See the case of DAAR COMMUNICATIONS PLC v. MCKEE (2022)

LPELR-57848(CA) where Per BARKA, J.C.A in (Pp. 31-32 paras. F) held that a breach of contract connotes that the party in breach acted contrary to the terms of the contract either by non-performance, or by performing the contract not in accordance with the terms or by a wrongful repudiation of the contract. See Pan Bisbilder (Nig) Ltd vs. First Bank of Nigeria Ltd (2000) FWLR (pt.2) 177, Saidu H. Ahmed & Ors vs. CBN (2012) LPELR-9341 (SC).

In this instant case, the term alleged to have been breached by the defendant is with respect to the payment of rent. It is the claimant's contention that the defendant's several breaches of the terms regarding the payment of the rent prompted claimants to initiate the seven days' notice to quit. To determine if there has been a breach the primary document to be examined is the lease agreement vis a vis the facts and evidence before this court. Clause 4.1 in Exhibit B and DW1, stipulates that the sum of 15 million naira for the year of 2020 be paid in three installments. Each payment for 2020 term is to be concluded on or before 30th of September 2020, however, the claimants made the payments from January 2020 and concluded payments in March 2021. The defendant did not controvert these facts but stated that the delays in making payment was due to the COVID-19 lockdown which affected their cash flow. The claimant also stated that there was breach in payment of the 2021 rent, from both Exhibits B and DW1 in clause 4(2), which states that the Rent shall be paid in the sum of 15 million naira for each year in full on or before the 30th day of March of such year. This clause is clear as it stipulates the date it needed the rent to be paid for each lease year. However, from the evidence before this court the defendant made payment for the 2021 lease in installments as opposed to the mode stipulated in the agreement as well as made an incomplete payment well past the date stipulated in the agreement with the sum of 5,000,000 (Five Million Naira) still outstanding to and yet unpaid to the claimant. The date the defendant made the 2021 payment which was made outside the

stipulated date was not disputed by the defendant, but defendant insisted that they are not in breach as they had made substantial payment/part payment to the 2021-2022 lease. As stated earlier parties are bound by the terms of their agreement and going by the above it is evident that the defendant complied by making payments for the lease term of 2021 albeit contrary to the terms, mode or manner stipulated in the lease agreement. Defendant has not challenged nor controverted the fact that they are yet to fully pay for the year 2021/2022. Going by the definition of a breach in the case of DAAR COMMUNICATIONS PLC v. MCKEE (Supra) the defendant is clearly in breach of the terms of payment stipulated in the lease agreement and I so hold.

The next question that begs to be answered is, whether the service of the seven days' notice to quit, sufficient to determine the tenancy. Again, the answer to this question lies in the lease agreement as parties are bound by the terms of their agreement. The lease agreement in Exhibit B provides for termination of the agreement between the parties in clause 7. Exhibit DW1 also provides for termination in clause 7.

Clause 7 in Exhibit B provides thus;

**“IT IS HEREBY AGREED BY THE PARTIES as follows**

- i. That the Lessor is entitled to revoke this Lease Agreement and give the Lessee a Notice of 7 Days to quit the Property if the Lessee fails and or defaults with payment of the Lease sum, on or before the 30th day of March of each year for the Years 2021 to 2024. The Lease shall be renewed at the pleasure of the Lessor and if the Lessor is satisfied that the Lessee has observed the covenants set out in the terms of this Agreement**

Clause 7 in Exhibit DW1 provides thus;

**IT IS HEREBY AGREED BY THE PARTIES AS FOLLOWS:**

- i. That the Lessor is entitled to revoke this Lease Agreement and give the Lessee a Notice of 7 days to quit the Property if the Lessee fails and or defaults with payment of the lease sum on or before the 30<sup>th</sup> day of March of each year from the Year 2021 to 2029.**

I must again reiterate that both lease agreements are essentially the same, in that, they state in clause 7(i) that the lessor, that is the claimant has the right to revoke the lease agreement and give the lessee seven days' notice to quit if the defendant fails or default on the payment before the 30<sup>th</sup> day of March each year. This clause is explicit that the mode of termination is the issuance of the seven days' notice to quit which the claimant in this case gave the defendant upon failure to pay the lease sum on or before the 30<sup>th</sup> day of March 2021. This is evidenced as Exhibit A which is a 7 days notice to quit dated 23<sup>rd</sup> April, 2021. The argument of the defendant that the lease for the year is yet to expire is misconceived as the court in the case of HELIOS TOWERS (NIG) LTD v. MUNDILI INVESTMENTS LTD (2014) LPELR-24608(CA) Per ABIRU, J.C.A in (Pp. 21-22 paras. E) held thus;

*"It must be stated from the onset that the law governing the determination of a lease agreement of landed property for a term of years is different from the law governing the determination of other types. The law recognizes that a lease agreement of landed property can be determined in any of four ways; namely (i) by effluxion of time; (ii) by a surrender of the lease; (iii) by abandonment of the lease; and (iv) where there has been a breach of covenants, by forfeiture."*

I must again state that the law is trite that parties are bound by the terms of their agreement and where an agreement provides a means of doing

something only that should be followed. The agreement both in Exhibit B and Exhibit DW1 clearly states that lease is for a "TERM CERTAIN". Also both Exhibit B and DW1 sets out clearly how the lease should be determined which is the issuance of the seven days' notice to quit and the Court in the case of OWOADE v. TEXACO AFRICA LTD (1973) LPELR-2851(SC) Per FATAYI-WILLIAMS, J.S.C in (Pp. 17 paras. C) held thus

*"The general rule as to notice given for the determination of a tenancy is this. Where there is any express stipulation as to the notice to be given by either party to determine the tenancy, such notice, whether it is more or less than that usually required by law, must be given and will be sufficient except where a longer or different notice is required by statute."*

In this case, the lease agreement governed the lease between the parties, and it states the mode of termination, it is therefore my view that the service of the seven days' notice to quit determined the tenancy between the parties.

The defendant's counsel is contending that the claimant having received part of the rent for the 2021 term, the notice issued had been varied. The Supreme Court in the case of PILLARS (NIG) LTD v. DESBORDES & ANOR (2021) LPELR-55200(SC) Per OGUNWUMIJU, J.S.C in (Pp. 24 paras. A) had this to say

*".....The fact that a landlord collected rent on a property still in occupation or possession of the tenant after notice to quit cannot by any stretch of the law, equity or imagination amount to a waiver of the notice to quit even where the notice had expired, and the tenant refused to yield possession in time. The notice to quit would subsist until it is formally rescinded by the landlord and or when a fresh tenancy agreement is entered into."*

It is necessary to state for the benefit of the counsel to the defendant that once a tenancy has been determined it remains dead and cannot be resuscitated except upon fresh terms and agreement by parties but definitely not by implied actions. A landlord may accept rents after the determination of a tenancy. Such "rent" is termed mesne profit. In essence where a Tenancy has been determined it cannot be revived; such tenancy cannot be revived simply because the landlord accepted mesne profit from the tenant. Under no circumstance can mesne profits be clothed as rents unless there is strong evidence that both parties consciously and in "**ad idem**" created a new tenancy based on the old terms of the determined Tenancy. This brings me to the issue of cause of action as raised by defendant counsel. Although this suit is both seeking declaratory claim and a prayer for recovery of premises, cause of action arises once tenancy is determined and in this case cause of action in respect of recovery of premises (prayer 2) arose upon the determination of tenancy of the defendant which was done by the service of 7 days notice to quit on the defendant. It is worthy to note that where a Tenancy is for a fixed term as in this case (whether 10 years or 5 years) service of a notice to quit is not necessary to determine the tenancy and this is because the certainty of the term has been incorporated into the agreement hence the law does not see any need to serve the tenant with a document notifying him of the landlord's intention to determine the tenancy. A fixed term or a term certain is as the phrase implies, it is fixed and certain and there is no doubt as to its date of maturity and date of determination. This is why a Tenancy for a fixed term/term certain effluxes unlike a yearly or monthly tenancy. Courts are bound to respect terms of agreement that party's voluntarily entered into and in both lease agreements before me a 7 days notice to quit was agreed upon by parties to determine tenancy. It is unchallenged that the plaintiff served defendant with 7 days notice to quit.

I therefore hold that defendant's tenancy was properly determined by the plaintiff, Moreso as there is no evidence before this court as to the conscious effort of both parties or adidem to create a new tenancy on the old terms and conditions or on fresh terms.

Going by the above, the Claimant collecting mesne profit from the Defendant subsequent to the service of the Notice to quit cannot amount to collecting rents neither does it amount to a waiver. There is no proof before this Court that the statutory notices were formally rescinded by the claimant, I therefore hold that by the terms of the lease agreement whether Exhibit B or Exhibit DW1, the service of notice to quit on the defendant amounts to the determination of the defendant's tenancy.

The claimant is relief 2 is claiming for recovery of possession on or before the 30<sup>th</sup> March, 2021. Learned counsel to the defendant is of the view that the suit was filed on 9<sup>th</sup> July, 2021 and by the said prayer of the claimant in seeking vacant possession on or before 30<sup>th</sup> March, 2022 the cause of action would accrue on 30/3/2022. As stated earlier cause of action in a recovery of premises suit arises after determination of Tenancy which in this case is the service of 7 days notice to quit served on the defendant. This piece of evidence is unchallenged and uncontroverted. The fact that claimant in the magnanimity of his heart chose to give defendant ample time to vacate premises does not infer that the cause of action is futuristic neither does it affect the jurisdiction of the court. The Tenancy having determined itself by effluxion of time, it is unchallenged that plaintiff served defendant with the requisite 7 days notice to quit.

At the expiration of the notice to quit, plaintiff filed this suit on 9/7/2021 and prayed that defendant gives up possession on or before the 30<sup>th</sup> March, 2022. The question that begs to be answered is "how has a landlord simply by giving a tenant ample and long date in order to vacate premises affected

the rights of the landlord to recover possession? Also “how does it affect the jurisdiction to the court? It is utterly absurd and ridiculous that a Tenant whose tenancy has been determined but who’s landlord in the magnanimity of his heart gave him ample length of time to vacate and deliver up possession can turn around to state that by so doing the landlord claims are futuristic. On the contrary once a Tenancy has been determined and the Tenant refuses/neglects to vacate it behoves on the landlord to serve the Tenant with a 7days notice of owners intention to apply to Court to recover possession and at the expiration of the 7days notice proceed to file a suit for recovery of possession. It is worthy to state that the 7days notice of owners intention does not determine a tenancy rather the service of a notice to quit or effluxion of Tenancy determines a Tenancy. Once a Tenancy has been determined, it is a condition precedent that a landlord must serve his tenant with a 7days notice of owners intention to apply to Court to recover possession, simply put, it is a notice served on the tenant informing him that if he fails to vacate premises within 7 days, his landlord intends to go to Court to get an order for him to vacate premises. Learned Counsel to the Defendant is of the mistaken belief that a 7days notice of owners intention determines a tenancy; this is incorrect, rather it is the notice to quit that determines a Tenancy or in Tenancies with a term certain, the effluxion of the tenancy determines it. The 7days notice of owners intention is simply a condition precedent to filing a suit in court for recovery of possession. Claimant served defendant with Exhibit F which is titled “Termination of Lease agreement and notice of Lessors intention to recover possession of property leased to Medimax Hospital LTD at Plot 555 CAD Zone BO2 DURUMI DISTRICT, ABUJA” Defendant has not denied being served with Exhibit F. This writ was filed by Claimant on the 9<sup>th</sup> July, 2021 whilst the Exhibit F is dated the 7<sup>th</sup> April, 2021. Between the 7<sup>th</sup> April, 2021 being the date stated on the 7 days owners intention and the 9<sup>th</sup> July, 2021

when the Plaintiff filed this suit is over 60 days, in other words Plaintiff served defendant with notice of owners intention to apply to recover possession in excess of 7 days. I do not see how defendants has been prejudiced by the Plaintiff's act of giving him notice in excess of the statutory period and it is my opinion that a notice in excess of statutory period does not invalidate the notice and I so hold.

Upon the service of owners intention to apply to recover premises, the landlord can either pray the court to issue the tenant with a suitable date to vacate premises or as in this case the landlord can pray the court for a convenient date when the tenant should vacate. By so doing, this does not infringe on the jurisdiction of the court neither does it affects the cause of action. I therefore hold that prayer 2 succeed

The claimant in relief three is seeking for mesne profits from the 31st of March 2022 to the date of delivery of vacant possession of the property to the claimant.

The black's law dictionary defines mesne profit as the immediate profit which has been accruing between two given periods. The value of use or occupation of land during the time it was held by one in wrongful possession and is commonly measured in terms of rent and profits. For Mesne profit to begin to accrue, the tenancy must have been determined either by effluxion of time or by notice to quit. Once the agreement between the parties have been determined upon service of a notice to quit what becomes due to the owner for the continued use of his premises by the defendant is the mesne profit. It is worthy to state that mesne profit accrues upon the determination of tenancy whether or not 7 days notice of owners intention has been served. In essence, the service or non service of 7 days notice of owners intention does not affect accrual of mesne profit. Mesne profit accrues after service of notice to quit or effluxion of tenancy. From the facts before me, the defendants continued in possession after the

determination of tenancy although the defendants continue to pay the rent on the property in installments the defendant under cross examination admitted that the sum of 15 million naira is being owed from the 31st of March till 30th of March 2023 and prior to the suit being filed, the sum of 5,000,000 naira was owed for rent for the 2021/ 2022 term. The defendant from the evidence before this court is still in possession of the property. The Court in INDUSTRIAL CONSULTANTS LTD v. MABAYOJE & ORS (2017) LPELR-50214(CA) PerGARBA, J.C.A in (Pp. 23-24 paras. B) held as follows;

*"Mesne profits are usually unliquidated sum representing the rents and profits a tenant whose tenancy had expired and/or was properly determined but stays in possession as a trespasser is adjudged to pay for use and occupation of the premises and its computation on the current value of the premises starts to run from the date of service of the process for the determination of the tenancy or its expiration thereof to the date possession of the premises is recovered by the landlord vide Nigerian Construction and Holdings Co. Ltd. v. Owoyele (1988) 4 NWLR (pt. 90) 588 followed in African Petroleum Ltd. v. Owodunni (supra) at 417 - 418 and 420....."*

Going by the above, defendant payment to the claimant after the determination of tenancy was not rents but mesne profit. Having determined tenancy plaintiff is entitled to mesne profit and this prayer succeeds.

The claimant in relief four is seeking for an order directing the defendant to restore all interior and exterior parts of the property altered during its occupation of the property to its original state and condition. From the facts and evidence before this court, the defendant who had leased out the subject property made several alterations to the property. The defendant under cross examination admitted when asked if he put the property in a way to suit his purpose he replied thus **"I had to put it in a way to be able**

**to use it".**The claimants in Exhibit H2 and H3 had noted the infractions/alterations on the subject property and notified the defendant to remove all alterations within seven days. These pieces of evidence were neither controverted nor challenged by the defendant, it is my view and I therefore hold that the claimant has successfully satisfied the burden to be entitled to this relief and I so hold.

The claimant in relief five is seeking for the sum of 1.5 million naira as cost of this action. Cost follows events and the essence of cost is to compensate the successful party for the part of the loss incurred in litigation. See *AMANA SOLID POLES (NIG) LTD & ANOR VS. OKAFOR & ANOR (2021) LPELR-55676 (CA)*.

In this case, claimant tendered a receipt for the sum of 500,000 naira as deposit for the total sum of N1.5 million for legal fee from Temple & Shield Attorneys (Exhibit D). This evidence was neither challenged nor debunked and thus remains credible which this court will act upon, and I hold that this relief also succeeds.

Consequently, it is my view that the claimant has successfully proved the entitlement of the reliefs sought in this case and I accordingly order as follows:

1. I hereby declare that by the Defendant's serial breaches of covenants contained in the Lease Agreement dated 5<sup>th</sup> January 2020 evidenced by its lack of capacity to pay the yearly lease sum in full and service of Seven Days' Notice to Quit by the Claimants on the Defendant, the Lease Agreement dated 5th January 2020 between the Claimant and 1st Defendant is forthwith terminated.
2. That the Defendant shall forthwith deliver to the Claimant vacant possession of the property described as Plot 555 Adjacent Old Federal Secretariat, Durumi, Area 1, Garki Abuja.

3. That the Defendant to pay mesne profit assessed at the rate of N41,100.00 (Forty-one Thousand One Hundred Naira) per day from 31st March 2022 till date of delivery of vacant possession of the property to the Claimant.
4. That the Defendant to restore all the interior and exterior parts of the property altered during its period of occupation of the property to its original state and condition within 14 days from date of delivery of judgment in this suit.
5. That the Defendant to pay to the Claimant the sum of N1,500,000.00 (One Million Five Hundred Thousand Naira) as cost of this legal action.

Parties: Absent

Appearances: Blessing Audray Moses appearing for the Claimants. Martin Agba appearing for the Claimant.

**HON. JUSTICE MODUPE R. OSHO-ADEBIYI**  
**JUDGE**  
**8<sup>TH</sup> JUNE 2023**