

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 20, GUDU-ABUJA
ON WEDNESDAY THE 24TH DAY OF MAY 2023
BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE R. OSHO- ADEBIYI
SUIT NO:CV/434/2021

BETWEEN:

MOHAMMED ADAMU =====CLAIMANT

AND

1. ALH. IDRIS ADAMU=====DEFENDANTS
2. KAZEEM SHUAIBU

JUDGMENT

The Claimant by a Writ of Summons dated and filed on the 15th day of February 2021, commenced this suit against the Defendants, praying the Court for the following reliefs:

1. A Declaration the Defendants' acts of trespass in disconnecting the Claimant's light and water, heaping of sand at the entrance to Claimant's premises lawfully demised to him by the Defendants, renting the premises out to another person while the claimant's tenancy was still subsisting, and unceasing threats and harassment meted out on the Claimant by the Defendants are unlawful, wanton, and reprehensible.
2. An order of perpetual injunction restraining the Defendants, by themselves, or through their agents, privies, assigns, representatives, or any other person or persons acting for or on their behalf, from further acts of trespass, harassments and/or threats of same against the Claimant.
3. Damages to the Claimant in the tune of N10, 000,000.00 (Ten Million Naira) against the Defendants for their acts of self-help and wanton disregard of the law in their dealings with the Claimant.

4. Interest at the rate of 10% on the judgment sum from the Day of Judgment till final liquidation.
5. The Sum of N1, 000, 000.00 (one million naira only) as cost of prosecuting this suit.

It is the Claimant's case that he entered a yearly tenancy with the 1st Defendant with respect to the House 1B, No 7 Gana Street, Maitama, FCT-Abuja at the annual rate of ten million Naira. That the 1st Defendant has been using extra-judicial means to harass and disturb the Claimant's possession of the premises with the intention of forcing the Claimant out of the demised premises. That on Friday, 9th October 2020, the 1st Defendant caused the electricity in the Claimant's premises to be disconnected which makes the Claimant rely on generator to get electricity. That the 1st Defendant also sent plumbers who also disconnected the Claimant from the water supply despite the Claimant's protests. That the 1st Defendant also caused a heap of sand to be heaped at the entrance to the Claimant's premises, barring him, his family members, and domestic personnel, as well as his visitors from gaining entrance or going out from the demised premises. That the Defendants have continued to call the Claimant on phone, write him threatening messages and order him to vacate the premises, as well as collected money for the demised premises from another tenant. That the Claimant currently lives in fear of the lives and safety of his family, domestic personnel and himself, and the Defendants have not taken any steps to lawfully recover the premises and if not restrained by this Honourable Court, the Defendants will persist in their acts of trespass with the bid to evict Claimant through extra-judicial means, hence this suit.

Upon being served with the Claimant's processes, the Defendants filed a joint statement of defence/counterclaim wherein Defendants sought the following reliefs:

- a. An Order directing the Defendant to quit and peacefully deliver up quiet and vacant possession and in a tenantable condition House 1B, No. 7, Gana Street, Maitama, Abuja.
- b. An outstanding sum of N1,000,000 (One Million Naira Only) being balance of rent for the tenancy term commencing on 1st July 2019 to 30 June 2020.
- c. Arrears of rent for nine Months (period between 1 July 2020 to March 2021) in the sum of N7,500,000 (Seven Million, Five Hundred Thousand Naira Only).
- d. Mesne Profit in the sum of N1,000,000 (One Million Naira) per month from March 2021 until the Defendant quits and deliver up vacant possession of the premises.
- e. 10% interest on all outstanding sums until the Defendant liquidates the Outstanding sum.
- f. The cost of this suit being N2,500,000 (Two Million, Five Hundred Thousand Naira Only).
- g. The sum of N2,000,000 (Two Million Naira Only) as exemplary damages.

The summary of the Defendants case from the statement of defence and counterclaim is that the Defendants never at any point in time disconnect the Claimants electricity and water, neither are they responsible for the heap of sand tipped at the entrance of the subject premises. That the Claimant was a tenant in the subject property whose tenancy determined by effluxion of time on 1st July 2020 but has remained in occupation till date. That the Claimant in 2019 made payment of N8,000,000.00 into the account of the 1st Defendant being part payment of rent for the term commencing on 1st July 2019 to 30 June 2020 with an outstanding sum of N2,000,000.00 for the said term. That the Defendant agreed to the proposal of the Claimant on condition that he gives an undertaking to that effect.

That the Claimant on 3rd November 2020 undertook to pay his outstanding rent and vacate the property by 31st December which Claimant has failed to honour his promise and has retained the property from the Defendants till date. That the Claimant has concocted false allegations and has refused to pay his outstanding rents as well as refused to vacate the premises. As a result, the Defendants issued a 7 days' notice of owner's intention to apply to Recover Possession which was served on the Claimant.

Parties having joined issues, the case proceeded to trial with the claimant opening his case by calling a sole witness who testified with the aid of an interpreter as PW1. The PW1 adopted his witness statement on oath and tendered a photograph of heap of sand which was admitted as Exhibit A.

Under cross examination, the PW1 stated he does not know the agreed amount on rent on the subject property, neither is he aware of the last time the claimant paid his rent. That he is aware the plaintiff is owing but cannot say whether or not he has paid the rent. That he was in the property when the sand was tipped but did not see any of the defendants dropping the sand but was told the owner of the house instructed them to do so.

The Claimant closed his case, and the Defendants opened their case calling a sole witness who testified as DW1. DW1 adopted his witness statement on oath as evidence in this case and tendered the following documents as exhibits:

1. Undertaking dated 3rd November 2020 and signed by Claimant admitted as Exhibit DWA1.
2. 7 days' notice to quit dated 9/3/2021 admitted as Exhibit DWA2.

Under cross examination, DW1 stated that there is an undertaking to show the tenant and the landlord's relationship between the parties although the undertaking is devoid of terms. That the recovery of premises commenced upon the service of the Claimant's Writ on the defendants. That they had no knowledge of the disconnection of the light and water of

the claimant's premises as well as the presence of the heap of sand in the premises.

A letter to Uche Amulu from Belgore Olufadi & Co. dated 9/3/2021 was tendered through DW1 by the Plaintiff's Counsel as Exhibit B.

The Defendants closed their case and the Court ordered parties to file their written addresses. The Defence Counsel, Ahmad Belgore, Esq. in the written address filed, raised two issues for determination thus:

1. Whether the Claimant has proved his case and thereby entitled to the grant of reliefs therein sought by the Claimant and
2. Whether the Defendants/counterclaimants have proved their case and are thus entitled to the grant of reliefs therein sought by them in their counterclaim.

Arguing issue 1, Ahmad Belgore, Esq., for the Defendants submitted that the Claimant has woefully failed to prove his case as the evidence presented by the Claimant is unreliable and frivolous and urged the Court to dismiss the Claimant's suit.

Arguing issue two, Counsel submitted that the Claimant, having failed to file a defence to their Counterclaim and the counterclaimant having complied with the requirements of issuing statutory notices, due to the repeated breach of the claimant, the defendants have successfully proved their entitlement to the relief sought in the counterclaim and urged the court to so hold. Counsel relied on the following cases:

1. Emesiani V. Emesiani (2013) LPELR-21360 (CA)
2. Onwueringo V. Adedapo (2020) LPELR-52491 (CA)
3. Onogwu & Ors V. Benue State Civil Service Commission & Ors (2012) LPELR-8604 (CA)
4. Nigeria Maritime Service Ltd V. Afolabi (1978) 2 SC 79 of 84
5. N. B. N Ltd V. U. C. Holdings Ltd (2004) 13 NWLR (Pt. 891) 436
6. Akpan V. Udoinwang & Ors (2020) LPELR- 51069 (CA)

7. Eleja V. Bagudu 91994) 3 NWLR Pt. 334, P. 534
8. Odutola Vs. Paperstack Nig. Ltd. (2006) LPELR-2259 (SC)
9. Tourist Co. of (Nig) Ltd V. Neo-Vista properties Ltd & Ors (2022) LPELR-58910 (SC)
10. Fidelity Bank Plc V. Sagecom Concepts Ltd&Anor (2021) LPELR-54850 (CA)

Upon receipt of the defendants' final address, the claimant filed their written address wherein claimant's Counsel raised three issues for determination as follows:

1. Did the claimant prove his case against the defendants in this suit under preponderance of evidence?
2. Did the defendants show any justification for their repeated interference with the Claimant's possession of the premises?
3. Is the defendants' counterclaim in this case cognizable in law?

Arguing the issues, Counsel to the Claimant submitted that from the totality of the evidence before this court, the claimant has established this case against the Defendants. Contended that the repeated interference of the claimant's possession of the property are within the knowledge of the defendants who is duty bound to prove same. Contended further that the evidence of DW1 is unreliable and be adjudged worthless by this court. Submitted that the letters and notices issued to the claimant are belated reaction to the suit filed by the claimant and unsupportable in law. Counsel urged the court to grant the reliefs in the statement of claim and dismiss the defendants' counterclaim. Counsel relied on the following:

1. Isegbkun & anor V. Adelokun & Ors. (2013) All FWLR Pt.664 Pg. 168 @188 para-D-E
2. Adebisi V. Umar (2013) All FWLR Pt. 683 Pg.2000 @ 2012-2013 para-D-E
3. Jegede & Anor Vs. FRN (2013) all FWLR pt.666 Pg. 594 @ 603-604.

4. Blackstone Crushing Co. Ltd V. Samoba Nig Ltd (2020) LPELR-51129 (CA)
5. Ogunyade V. Oshunkeye (2007) 15 NWLR pt. 1057 pg. 218 @247
6. Osadim V. Taiwo (2010) 6 NWLR (Pt.1189) 155
7. BAC Electrical Co. Ltd V. Adesina (2020) 14 NWLR (Pt.1745 P.235
8. Aregbeshola V. Oyinlola (2011) All FWLR Pt. 570 Pg. 1292 @1389 G-H
9. BFI Group Corp V. Bureau of Public Enterprises (2013) All FWLR Pt. 676 Pg. 444 @ 467 para-E-F.
10. Olonade V. Sowemimo (2014) LPELR-22914 (SC)

The Defendants filed a reply on points of law contending that the address of counsel cannot take the place of evidence as they failed to file a reply/defense to the counter claim. Submitted that the doctrine of *lis pendis* raised by the claimant's counsel is misplaced and urged the court to discountenance the argument and hold the counterclaim competent.

I have considered the case of the claimants, pleadings, evidence of PW1 and written address of counsel to the claimant. I have also examined the totality of the case of the defendants as well as their counterclaim, written address as well as reply on points of law by the Defendants' Counsel and two issues call for determination as follows:

1. Whether the Claimant is entitled to the reliefs as sought in his statement of claim.
2. Whether the defendants are entitled to the relief sought in their counterclaim.

With respect to issue one, which is, whether the claimant is entitled to the reliefs as sought in a statement of claim, the nature of the claimant's first reliefs declaratory in nature. The law is very well settled that actions of this nature are never granted merely as a matter of course, hence, the claimant is duty bound to succeed on the strength of his case. The Supreme

Court in the case of MR. JOSEPH WAYA v. PROF. PRISCILLA DENEN AKAA & ORS (2023) LPELR-60096(SC) Per NWEZE, J.S.C in (Pp. 19-20 paras. F) held thus

"Above all, declaratory reliefs are not granted as a matter of course and on platter of gold. They are only granted when credible evidence has been led by the plaintiff or person seeking such reliefs, Anyanru v. Mandilas Ltd (2007) 4 SCNJ 288; Chukwuma v. S.P.D.C. (Nig.) Ltd (1993) LPELR-864 (SC) and Matanmi and Ors v. Dada and Anor (2013) LPELR-19929 (SC)."

In this instant case, the claimant to prove his case, gave evidence through PW1 to prove trespass by the Defendants in paragraph 7, 8, 9, 10 and 11 of his witness statement on oath. The said paragraphs are here under reproduced.

7. Since the Claimant's rent became due, the 1st Defendant has been using extra-legal means to harass and disturb the Claimant's possession of the premises with the intention of forcing the Claimant out of the demised premises.

8. On Friday, 9th October 2020, the 1st Defendant caused the light in the Claimant's premises to be disconnected and the Claimant now runs on generator. The Claimant did all within his powers to have the light reconnected, but the 1st Defendant kept calling him on phone with very serious threats. And as if that was not enough, the 1st Defendant sent plumbers who also went and disconnected the Claimant's water, despite the Claimant's protests.

9. Not done with his acts of wanton trespass, the 1st Defendant on 16th October 2020, caused a tipper of sand to be heaped in front of the entrance to the Claimant's premises, thus barring the Claimant, his family members, and domestic personnel as well as his visitors from gaining entrance to or going out from the demised premises.

10. Being a peaceful person, the Claimant called the Defendants on phone and pleaded for more time to be given to him to enable him source money and pay up thereon which has totalled up to N7, 000, 000.00 (Seven Million Naira only), but the 1st Defendant would have none of that. In fact, the 1st Defendant caused another heap of sand to be tipped in the other side of the demised premises, at the car park, and if not for the fact that the Claimant was fortunate to be at home and challenged the tipper driver, a second heap of sand would have been in the Claimant's premises.

11. The Defendants have continued to call the Claimant on phone, write him threatening messages and ordering him to vacate the premises else he would be decisively dealt with. In fact, the Defendants informed the Claimant that they have collected money for the demised premises from another tenant, a serving senator of the Federal Republic of Nigeria, whose name they withheld from the Claimant.

In proof of these, the Claimant tendered photographs of the heap of sand at the subject premises. Now can the above facts be said to constitute trespass by the Defendants. The Supreme Court in the case of OMORHIRHI & ORS. V. ENATEVWERE (1988) LPELR-2659(SC) PerWALI, J.S.C in (Pp. 14 paras. C) defined Trespass as a wrongful act, done in disturbance of the possession of property of another, or against the person of another, against his will. The Court held further that "*to constitute trespass the act must in general be unlawful at the time when it is committed... Whoever is in possession, may maintain an action of trespass against a wrong doer to his possession.*"... "*Every unlawful entry by one person on the land in the possession of another is a trespass for which an action lies ... (and) a person trespasses upon land if he wrongfully set foot on, or rides or drives over it, or pulls down or destroys anything permanently fixed to it or wrongfully takes minerals from it.*"

In this instant case, from the totality of the evidence before this court, the Claimant has failed to prove that the Defendants are responsible for the acts of trespass complained of by the Claimant and I come to this conclusion due to the following findings; The photograph, that is Exhibit A, tendered by the PW1 showing the heap of sand alleged to have been tipped at the subject premises by the Defendant is not sufficient to prove that the sand was tipped by the Defendant. Merely exhibiting the picture of the sand is to show that there is indeed sand at the entrance of the property and nothing more. There is no shred of evidence before this Court that the Defendants caused the sand to be placed at the premises as the PW1 under cross examination admitted that he did not see the Defendants placing the sand but was merely informed that it was the Defendant that instructed the drivers to tip the sand at the premises. I agree with the argument of the Defence Counsel that the

evidence of the PW1 is unreliable as it falls under the category of hearsay evidence, and the general rule is that hearsay evidence is inadmissible in law except same falls under the exceptions in Section 39 of the Evidence Act which fails to apply in this instant case.

From the totality of the evidence before this Court, the Claimant has also failed to prove that the Defendants were responsible for the disconnection of the water and light in the premises as mere assertion of facts without more is not credible evidence of facts asserted. The Claimant ought to have gone further to prove or establish the assertion in order to give it some evidential weight. The Court in OKUNADE v. OLAWALE (2014) LPELR-22739(CA) Per OWOADE,J.C.A in (Pp. 91 paras. C) held

"When evidence that should be substantiated is not so substantiated, it remains in the realm of an assertion to be likened to a mere ipse dixit and cannot be regarded to be credible and worthy of belief. In Debs V. Cenico Ltd. (1986) NWLR (Pt.32) 846 at 853 - 854, Oputa JSC expounded the law thus: "Now Ipse dixit literally means he himself said it. It is thus a bare assertion resting on the authority of an individual. There can be no question that a 'mere ipse dixit' is admissible but it is evidence resting on the assertion of the one who made it. Where there is need for further proof "a mere ipse dixit" may not be enough. "

Consequently, it is my view that the Claimant neither led evidence nor proved his case on how the Defendant trespassed on his property and as such the Claimant has failed to prove his entitlement to the declaratory relief, relief 1 fails and I so hold.

The subsequent reliefs of perpetual injunction and damages are consequential orders which naturally flows from the declaratory order

sought. Thus, having failed to prove the entitlement to the declaratory reliefs, these claims also fail, and I so hold.

The Claim of the claimant is consequently dismissed for failing to prove same.

The second issue to be determined is whether the Defendants is entitled to the reliefs sought in the counterclaim. **For ease, parties shall maintain their description in this counterclaim.**

The Defendants in this suit, filed a counterclaim and the law is trite that a counter claim is an independent action, which allows a defendant to maintain an action against the Plaintiff as if he had filed a separate suit. See the case of OROJA VS. ADENIYI (2017) 1 SC (Pt. 111) 116. See the case of TOURIST COMPANY OF NIGERIA LIMITED v. NEO-VISTA PROPERTIES LIMITED & ORS (2022) LPELR-58910(SC) Per GARBA, J.S.C in (Pp. 50-51 paras. B-B) held

"The law is now beyond argument that a counterclaim made in a suit or action is a separate and independent action from the main action in which it was made and for the purposes of determination, the counter-claimant becomes the Plaintiff whilst the party against whom the counterclaim is made becomes the Defendant. The initial burden of proof of a counterclaim, just like in the main claim, lies on the party against whom judgment will be given if no evidence at all was called in the case and desires that judgment be entered in his favour on the basis of assertions he makes in the counterclaim.

A counterclaimant therefore bears the burden of proof imposed by the provisions of Sections 131, 132 and 133 (1) of the Evidence Act; in respect of the counterclaims, he makes in the main action and unless he satisfactorily discharges that burden, the counterclaim will be liable to be dismissed..."

A counterclaim being an independent suit, the claimant who is the defendant in the counter claim ought to file a defence to the counter claim and a Claimant who fails to file a reply in defence to the Defendant's counterclaim may have the claim resolved against him. Be that as it may, for the Defendants to have the case resolved in their favour, they must prove their case to be entitled to their reliefs. In this instant case, the Claimant failed to file a response to the Defendants' counterclaim, however, the Claimant's Counsel challenged same in the written address contending that the issues raised in the counterclaim is a belated action to the suit of the claimant and ought not be filed in this instant suit. The question that therefore begs to be answered at this point is can the counterclaim be heard in this instant suit? The Supreme Court in the case of GOWON V. IKE-OKONGWU (2003) 5 NWLR (PT.515) 38 SC, refused to allow a counter claim which cause of action accrued after the date of the issuance of the Writ. This is the bone of contention of the Claimant's Counsel, as the notice issued by the Defendant to the Claimant was made after the institution of the Writ.

This position of the Claimant cannot stand as the cause of action as gleaned from the counterclaim particularly paragraphs 22, which states that the Claimant's whose tenancy determined by effluxion of time on 1st July 2020 remained in occupation without making payment for rent or give up possession of the property. Thus, it is my view that the cause of action claimed accrued upon the determination of the tenancy by effluxion of time of tenancy and the Claimant's refusal to pay rent or give up possession. The notice issued to the Claimant was done in compliance with the condition precedent required by law for the recovery of possession. A landlord has the right to take action to recover his premises as that lies solely at the discretion of the landlord. It is

therefore my view that that the counterclaim before this Court is competent and I so hold.

Now dealing with the crux of the counterclaim, I had previously stated that the counterclaim is unchallenged, however, this Court will determine whether the Defendants have proved their case to be entitled to the reliefs sought.

The Defendant in the counterclaim is in relief 1, claiming for an Order directing the Defendant to quit and peacefully deliver up quiet and vacant possession and in a tenantable condition, House 1B, No. 7, Gana Street, Maitama, Abuja.

At the determination of a tenancy by notice to quit or effluxion of time a tenant is entitled to be served with a 7 days' notice of the landlord's intention to recover possession of the demised premises.

Thus, it is after the proper service of the appropriate notices, a landlord can proceed to bring an action for the recovery of possession. See the case of *AYINKE STORES LTD V. ADEBOGUN* (2008) 10 NWLR (Pt. 612 at P.630 para-A-B.

The Court in *NDIELI & ANOR v. EZE* (2016) LPELR-42122(CA) Per OGUNWUMIJU, J.C.A (as he then was) in (Pp. 17 paras. C) held

"It is the law, and it has been reiterated almost to irritation that recovery of premises must be done by due process of the law. Any other form of recovery is unlawful. It cannot be over-emphasized that recovery of possession of premises from a tenant by a landlord can only be by an order of Court obtained after hearing the parties pursuant to the relevant Recovery of Premises Law. See Ihenacho v. Uzochukwu (1997) 2 NWLR Pt. 487 257."

In this instant case, I have carefully considered the unchallenged evidence in the counterclaim that the tenancy between the parties determined by effluxion of time in June 2020, however, the Claimant continued in possession since 2020 till date without making any payment even after signing an undertaking as in Exhibit DWa1 to pay the outstanding rent due and vacate the property by 31st December 2020. The Claimant's tenancy having determined since June 2020, is rightly due to be served the 7 days' notice of owners' intention to recover possession by the Defendant and the Defendants by Exhibit DWa2 duly complied with the requirement of the law and served accordingly. In *IHEANACHO V. UZOCHUKWU* (1997) 2 NWLR (Pt.487) 257, the Court held that a landlord who desires to recover possession shall, firstly, unless the tenancy has already expired, determine the tenancy by service on the tenant of an appropriate notice to quit. On determination of the tenancy, he shall serve the tenant with the statutory 7 days' notice of his intention to apply to court to recover possession of the premises. Consequently, it is my view that the Defendants are entitled to relief 1 having complied with the statutory requirement and I so hold.

The Defendant in relief 2 in the counter claim is claiming for an outstanding sum of N1,000,000.00 (One Million) Naira being balance of rent for 2019/2020 term. There is evidence before this Court that the Claimant has an outstanding sum for the 2019/2020 term, which amounts to the sum of N 1,000,000.00 as derived from paragraph 32 of the DW1's witness statement on oath, which evidence is unchallenged by the Claimant. It is therefore my view that the Defendants have proved the entitlement of this relief and I so hold.

The Defendant in relief 3 is seeking for arrears of rent for nine Months (period between 1 July 2020 to March 2021) in the sum of N7,500,000

(Seven Million, Five Hundred Thousand Naira Only). This relief fails as arrears of rent is the rent due and is operative during the subsistence of the tenancy, hence, having stated that the tenancy between the parties has been determined by effluxion of time. The Defendant is therefore not entitled to arrears of rent, and I so hold.

The defendant in relief 4 is seeking for Mesne Profit in the sum of N1,000,000 (One Million Naira) per month from March 2021 until the Defendant quits and deliver up vacant possession of the premises. The law is that an action for mesne profit does not lie, unless either the landlord has recovered possession or the tenant's interest in the property has come to an end. See the case of CHEMIRRON (INT'L) LTD VS. STABILINI VISIONI LTD (2018) LPELR-44353. In this instance, from the undisputed facts before this court, the claimant tenancy expired by effluxion of time on the 30th of June 2020 and by exhibit DWa1, which is the undertaking to pay or vacate the premises which undertaking the claimant failed to comply with and is still in the property seeking means to continue to benefit without making any payment to the landlord. Defendant's counter-claim is seeking for arrears of rent and mesne profits. As held above arrears of rent does not operate in a tenancy of this nature which was determined by effluxion of time. It is trite that once a tenancy effluxes, the landlord is automatically entitled to mesne profits from the tenancy. Hence at the effluxion of claimant's tenancy on the 1st July, 2020, the landlord (defendant) right to mesne profits matures if the tenant has refused to give up possession. Unfortunately, rather than pray the court for mesne profit from July 2020, defendant rather sought for arrears of rent which is not a feature of a tenancy that effluxed. Defendant in his counter-claim prayed for mesne profit from March, 2021 in the sum of N1,000,000.00 per month till defendant vacates property. It is trite that the court is not a father Christmas and cannot give excess of what is not claimed. Moreover, the

jurisdiction of the court is governed by the claim before the court; hence the court does not have the powers to award more than is claimed in the writ before the court. Consequently, it is hereby ordered that defendant pays mesne profits to the claimant in the sum of N1, 000,000.00 per month from the first day of March, 2021 until possession is finally given up. With respect to the relief of 10% interest rate on judgment sum, the Recovery of premises law is a delicate piece of legislation and nowhere does it envisage the payment of interest on rents or mesne profits. Moreover, Mesne profit is not a lump sum that can be determined at the time of judgment as it is only determinable as a lump sum when the tenant finally gives up possession. This relief fails.

The Defendant is seeking for cost of this suit being N2,500,000.00 (Two Million, Five Hundred Thousand Naira Only). Cost is at the discretion of the court. Therefore, the cost of 1,000,000 naira is awarded in favour of the defendants.

The Defendants are also seeking for the sum of N2,000,000 (Two Million Naira Only) as exemplary damages. Exemplary damages can be made in addition to normal compensatory damages and should be made only: a. In a case of oppressive, arbitrary, or unconstitutional acts by government servants; b. Where the defendant's conduct had been calculated by him to make a profit for himself, which might well exceed the compensation payable to the plaintiff, and c. Where expressly authorised by Statute. See the case of NURSING AND MIDWIFERY COUNCIL OF NIGERIA v. PATRICK OGU & ANOR (2019) LPELR-53899(SC) (Pp. 15-17 paras. F). Flowing from the above, it is my view and I so hold that this relief fails to qualify under the above circumstances where exemplary damages can be granted, this relief therefore fails.

Ultimately, the case of the Claimant is dismissed, and the counterclaim of the Defendants succeeds in part, and I hereby order as follows:

- a. That the Claimant forthwith quit and peacefully deliver up quiet and vacant possession and in a tenantable condition, House 1b, No. 7, Gana Street, Maitama, Abuja with all appurtenances.
- b. That the Claimant forthwith pays to the Defendants the outstanding sum of N1,000,000 (One Million Naira Only) being balance of rent for the tenancy term which commenced on 1st July 2019 to 30th June 2020.
- c. That Claimant pays mesne profit to the Defendants in the sum of N1,000,000.00 (One Million Naira Only) per month from 1st March 2021 until possession is finally delivered to the Defendants.
- d. Claimant is to pay forthwith to the Defendants the sum of N1,000,000 .00 (One Million, Naira Only) being the cost of this suit.

Parties: 2nd Defendant is present.

Appearances: Uche Amulu appearing for the Claimant. Habib Tahir appearing with Sakina Usman for the Defendants.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
24/05/2023