

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION)
HOLDEN AT WUSE ZONE 2
HIS LORDSHIP HON. JUSTICE A. S. ADEPOJU
AND
HIS LORDSHIP HON. JUSTICE Y. HALILU
ON THE 30TH DAY OF OCTOBER, 2018**

APPEAL NO: CVA/369/2016

BETWEEN:

AKPAN VERA JABE -----APPELLANT

AND

RYM PROPERTIES LTD -----RESPONDENT

K. J. OMANG appears with U. S. AKPABA for the appellant.

CHISIMDI M. CHIMA appears for the Respondent.

JUDGEMENT

The ground upon which this appeal was filed is that the learned trial Chief District Judge erred in law when he held that Mesne profit are granted at the discretion of the court and proceeded to fix the sum of N141,666.66 (One Hundred and Forty One Thousand Six Hundred and Sixty Six Naira Sixty Six Kobo) per month as mesne profit from the 6th day of October 2015 till possession is delivered.

Parties filed and exchanged brief of arguments. The plaintiff's brief was settled by Francis Sylvester Esq. while that of the respondent was settled by Dr. Ehiogie West Idahosa. The lone issue for determination is whether the award of ~~N1~~ ,500,000 (One Million Five Hundred Thousand Naira) as mesne profit by the Chief District Judge A. I. Eri was perverse and wrong in law.

We have carefully perused the argument by parties in their respective briefs and say straightaway that an award of mesne profit is not calculated or based on the discretion of the court. It is either awarded based on the annual rent value of the property or where the Landlord intends to claim a higher rent as mesne profit, it must be a fair rental value of the property when compared with the prevalent rent in the neighbourhood for similar property.

In the latter instance, the party claiming higher rent as mesne profit would have to prove same by expert evidence; such as the evidence of an Estate Valuer. in the case of **AYINKE V LAWAL (1994) 7 FWLR(P.T. 356) 267**, the court held;

“Mesne profit are generally calculated on the yearly value of the premises and a Landlord is certainly not bound to use the rent payable during the tenancy as a yardstick in his determination of mesne profit. Where the rent represents the fair value of the premises, mesne profit shall be assessed at the amount thereof, but where the real or actual value of the premises exceeds the reserved rent, then mesne profit may therefore be equated with fair, real or actual value of the use and occupation of a premises during the period the premises is held over by a person in wrongful possession thereof. They are not necessarily commensurate with rent reserved in the expired lease... ..”

See **DEBS V CHEICO (1986) NSCC 838**, where the Court of Appeal also held;

“Where rent represents the fair value of the premises, mesne profit shall be assessed at the amount thereof but where the real or actual value of the premises exceeds the reserved rent, then mesne profit are assessed at such higher rate or figure.”

In the instant case, the mesne profit awarded by the Chief District Judge was based on the agreed rental value of the property during the period the appellant held over. Although the claim of the respondent for mesne profit as contained in the plaint was higher than agreed rent by the parties, this obviously was not proved; however the court was right to have assessed the mesne profit at the actual or agreed value of the property by the parties.

The conclusion reached by the learned Chief District Judge is therefore not perverse. We affirm the decision of the lower court and dismiss the appeal accordingly. The sum of **₦10,000 (Ten Thousand Naira)** is awarded as cost.

HON JUSTICE A. S. ADEPOJU
Presiding Judge
30/10/2018

HON JUSTICE Y. HALILU
Hon. Judge
30/10/2018