

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ABUJA**

**BEFORE HIS LORDSHIP: THE HON. JUSTICE PETER O. AFFEN**

**MONDAY, JANUARY 14, 2019**

**SUIT NO. FCT/HC/CV/CV/1666/2018**

**BETWEEN:**

**ALHAJI RAIMI OLADIMEJI                    ...                    ...                    CLAIMANT**

**AND**

**ALHAJI KABIRU NUHU POLOMA ...                    ...                    DEFENDANT**

**JUDGMENT**

**THE CLAIMANT** therein [*Alhaji Raimi Oladimeji*] initiated these proceedings against the Defendant [*Alhaji Kabiru Nuhu Poloma*] by a writ of summons issued out of the Registry of this Court on 2/5/18, claiming the reliefs endorsed therein as well as in the accompanying statement of claim. He subsequently filed a motion on notice dated 19/9/18 praying the court to enter summary judgment in his favour “*as per the claims contained in the originating writ of summons against the Defendant/Respondent in this suit*” on the grounds set out on the face of the motion paper. The motion for summary judgement is supported by a 19-paragraphed affidavit deposed by *Taiwo Aderibigbe Esq.* of counsel in the law firm of *Tairu Adebayo & Co.*, solicitors for the Claimant, with Exhibits TQA-1, TOA-2 and TQA-3 annexed thereto.

Upon being served, the Defendant caused appearance to be entered on his behalf and personally deposed to a 20-paragraphed counter affidavit dated 8/1/19 with Exhibits AA and BB annexed thereto, but did not file any statement of defence. He equally filed a notice of preliminary objection dated 8/1/19 challenging the court's jurisdiction to entertain this suit, which objection was heard along with the motion for summary judgement in a consolidated hearing.

The ground of objection raised by the Defendant is that requisite recovery notices as provided in the *Recovery of Premises Act* were not served on the Defendant and this action as presently constituted is incompetent and the court lacks the required jurisdiction to entertain this matter. The cases of **SULE v NIGERIAN COTTON BOARD [1985] 2 NWLR (PT. 5) 17**, **PAN ASIAN v NICON (1982) 13 NSCC 293**, **CEDAR v MGA (2001) 18 WRN 144 at 166**; **IHEANACHO v UZOCHUKWU [1997] 2 NWLR (PT. 487) 257 at 269 – 270**, **MADUKOLU v NKEMDILIM (1962) 2 SCNLR 341**, **A-G ANAMBRA v A-G FEDERATION [1993] 6 NWLR (PT. 302) 692**, **OLORODE v OYEBI (1984) 1 SCNLR 390**, **SALEH v MONGONU [2003] 1 NWLR (PT. 1051) 214** and **AMADASUN v UME [1990] 13 NWLR (PT. 1051) 214** were cited in urging the court to decline jurisdiction.

The reaction of the Claimant's counsel [who sought and obtained the leave of court to oppose the objection orally] is that the preliminary objections should be dismissed for being misconceived in that the Claimant has not made any claim for possession and no necessity arises to demonstrate that recovery notices were served before initiating this suit.

Without much ado, I cannot but uphold the submission of the Claimant's counsel that this objection ought to be dismissed for being overly misconceived. Whilst it is correct that the service of recovery notices is a condition precedent to the filing of an action for recovery of premises [see **SULE v NIGERIAN COTTON BOARD** *supra* and **A. P. LTD v OWODUNNI [1991] 8 NWLR (PT. 210) 391**, the reliefs sought by the Claimant herein are arrears of rent, mesne profits, professional fee/costs of prosecuting this action and post-judgment interest, which have nothing to do with recovery of premises for which service of recovery notices is a condition precedent. The preliminary objection therefore fails without further assurance.

Let us shift attention to the motion for judgment, which is a convenient cost-saving summary procedure for the recovery of debts and monetary claims with no genuine defence on the merits. It is a special procedure provided for in Order 11 of the High Court of the FCT (Civil Procedure) Rules 2018 to expedite the hearing and determination of obvious indefensible claims of indebtedness, which obviates the rigour of a full-dressed hearing that would require the exchange of pleadings and calling of witnesses to establish the claim with attendant time and energy input, struggle, contentions and legal fireworks by parties and counsel. See **ILORIN EAST LOCAL GOVT. V ALASINRIN [2012] All FWLR (PT. 645) 226** and **CHACHANGI AIRLINES NIG. LTD v A.P. PLC [2015] 14 NWLR (PT. 1449) 256 at 270**.

The reliefs sought by the Claimant, as endorsed in the writ of summons dated 14/5/18 and accompanying statement of claim are as follows:

- (1) The sum of ₦9m representing arrears of rent due from the Defendant for occupation of No. 40 Osumeyi River Close, Off Lake Chad Crescent, Off IBB Way, Maitama, Abuja.

- (2) Mesne profits in the sum of ₦500,000 per month from the date of this suit until possession is given up.
- (3) ₦2m as cost of prosecuting this action; and
- (4) 15% post-judgment interest.

It is deposed in the affidavit in support of motion for summary judgment that the Defendant, being indebted to the Claimant to the tune of ₦9m as unpaid rent, issued to the Claimant a cheque drawn on SunTrust Bank dated 7/3/18 [Exhibit TOA-3] in the said sum of ₦9m sometime in 2018 but the cheque was returned unpaid upon presentation; and that the debt remains unpaid whilst the Defendant remains in possession.

The Defendant deposed [in the counter affidavit to motion for summary dated 8/1/19] that he issued the ₦9m cheque in March 2018 as outstanding rent for the period ending on December 2018 on the understanding that it was not to be presented for encashment by the Claimant; and that he subsequently paid the sum of ₦4.5m to the Claimant by means of Union Bank of Nigeria Cheque No. 02889660 dated 29/10/18 (Exhibit AA) and a further sum of ₦3.5m via Union Bank of Nigeria cheque No. 02889666 dated 29/11/18 (Exhibit BB), for which the Defendant has since received value.

*Dennis Abu, Esq.* of counsel for the Claimant conceded at the hearing [on 14/1/18] that the Defendant has actually paid ₦8m to the Claimant during the pendency of this action; whilst the Defendant's counsel, *S. B. Monokpo, Esq.* equally conceded that the sum of ₦1m on the rent ending in December 2018 remains outstanding and unpaid. What this means is that the Defendant's

indebtedness on rent up until the end of 2018 now stands at ₦1m, and I hereby adjudge the Claimant entitled to the said sum.

Relief 2 is for mesne profits of ₦500,000 per month until possession is given up. But since the Claimant did not claim possession, this claim must necessarily fail. It hardly bears mention that mesne profits are only recoverable where a tenancy has expired (in the case of fixed tenancies) or it has been determined by valid recovery notices, which is not the case here. See **A. P. LTD v OWODUNNI** *supra* at 417 – 418 and **AYINKE v LAWAL(1994) LPELR 680 (SC)**.

Relief 3 is a claim for ₦2m. Although this head of claim is disguised as one for costs, its essence seems to me a claim for solicitor's fee. Unfortunately, however, a claim for solicitor's fee is not one that can readily be granted under the present state of Nigeria law. In **GUINNESS NIGERIA PLC v NWOKE[2000] NWLR (PT. 689) 135 at 150**, the Court of Appeal (per Ibiyeye, JCA) held that a claim for solicitor's fee is outlandish and should not be allowed because not only did it not arise as a result of damage suffered in the course of any transaction between the parties, it is unethical and an affront to public policy to pass on the burden of solicitor's fees to the adverse party. See also **NWANJI v COASTAL SERVICES LIMITED[2004] 36 WRN 1 at 14-15**, wherein his Lordship, Uwai fo JSC citing **IHEKWOABA v ACB LIMITED [1998] 10 NWLR (PT. 571) 590 at 610 – 611** stated that damages as an aspect of solicitor's fee is not one that lends itself to support in this country as there is no system of costs taxation to get a realistic figure and costs are awarded arbitrarily and certainly usually minimally. Needless to say that the above decisions are forcefully binding on me under the inflexible doctrine of *stare decisis*, and I am bound to kowtow. I therefore entertain no reluctance whatsoever in disallowing this head of claim without further assurance.

Accordingly, judgment will be and is hereby entered for the Claimant against the Defendant in the sum of ₦1m being the balance of unpaid rent for the use and occupation of No. 40 Osumeyi River Close, Off Lake Chad Crescent, Maitama, Abuja.

This sum shall attract post-judgment interest at the rate of 10% per annum until the same is fully paid.

I assess the 'actual' costs of this action at ₦100,000 in favour of the Claimant against the Defendant.

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**PETER O. AFFEN**  
Honourable Judge

**Counsel:**

***Dennis Abu, Esq.*** (with him: ***Taiwo Aderibigbe, Esq.***) for the Plaintiff.

***S. B. Monokpo, Esq.*** (with him: ***Princewill Ebubedike, Esq.***) for the Defendant.