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

THURSDAY, FEBRUARY 21, 2019

SUIT NO. FCT/HC/CV/1605/2016

BETWEEN:

UGOCHUKWU A. MBEGBU … … **PLAINTIFF**

AND

1. ALPHA-PLUS ASSOCIATES LTD
2. GODWIN IJEOMA } … … **DEFENDANTS**

J U D G M E N T

BY A FURTHER AMENDED STATEMENT OF CLAIM dated 5/10/18 [which relates back to 28/4/16 when the original writ of summons was issued out of the Registry of this Court along with the accompanying original statement of claim], the Plaintiff herein claims against the Defendants jointly and severally as follows:

"1. A Declaration that the sealing of Plot 63 Parakou Crescent, Wuse II, Abuja by welding together the gate and parking a 20-ton truck No. Abuja XL 429 ABC belonging to the 1st Defendant, by the Defendants without recourse to due process of law amounts to forceful ejection of the Plaintiff, which is reprehensive (sic), high handed and an abuse of the rule of law.

2. The sum of ₦20,000,000.00 (Twenty Million Naira) as damages for trespass.

3. The sum of ₦150,000,000.00 (One Hundred and Fifty Million Naira) as exemplary/punitive damages for forceful ejection of the Plaintiff and for the emotional and psychological depression and anxiety suffered by the Plaintiff as a result of the act of the Defendants in forcefully ejecting him and his family from Plot 63 Parakou Crescent, Wuse II, Abuja.

4. The sum of ₦1,880,000.00 (One Million, Eight Hundred and Eighty Thousand Naira) as special damages incurred by the Plaintiff in hiring vehicles for his daily commuting and [other] activities.

5. 10% interest on the judgment sum from the date of judgment till the judgment sum is finally liquidated."

The Defendants joined issues with the Plaintiff by filing an amended statement of defence dated 26/9/17 to which they also subjoined a counterclaim as follows:

"1. An Order directing the Plaintiff to pay the Counterclaimants the sum of ₦8,109,835.29k (Eight Million, One Hundred and Nine Thousand, Eight Hundred and Thirty-Five Naira, Twenty-Nine Kobo only) being cost of terminal repairs, arrears of rent and service charge due to the counterclaimants from the Plaintiff for the occupation and use of the three bedroom flat and one bedroom boys' quarters located at Plot 63 Parakou Crescent, Wuse II, Abuja consisting of:
   a) Outstanding rent from Rent for 10th September, 2013 to 9th September, 2014 - ₦3,000.000.00k.
   b) Service charge as at 28th February, 2014 - ₦805,599.16k
   c) Rent for 10th September 2014 to May 2015 - ₦3,116,666.66k.
   d) Service charge for March 2014 to May 2015 - ₦878,969,03k (for services excluding generator usage).
   e) Expenditure on some terminal repairs by the counterclaimants after the Plaintiff vacated from the premises - ₦308,600.00k (Three Hundred and Eight Thousand, Six Hundred Naira only).

2. An Order directing the Plaintiff to pay the Counterclaimants the sum of ₦24,500,000.00k (Twenty-Four Million, Five Hundred Thousand Naira only) being the rent which the Counterclaimants would have earned for a year upon renovating and letting out the six (6) dwelling units in Plot 63, Parakou Crescent, Wuse II, Abuja had the Plaintiff not frustrated the renovation.

3. Interest on the above stated sum of ₦8,109,835.29k (Eight Million, One Hundred and Nine Thousand, Eight Hundred and Thirty-Five Naira, Twenty-Nine Kobo only) and ₦24,500,000.00k (Twenty-Four Million, Five Hundred Thousand Naira only) at 5% above the Central Bank of Nigeria Policy Rate until Judgment, and thereafter 10% until the Judgment is satisfied.
4. Damages in the sum of ₦5,000,000 (Five Million Naira only).
5. For such further orders which this Honourable Court may deem fit to make in the circumstances."

The Plaintiff filed a reply to statement of defence and defence to counterclaim dated 13/10/17 and called four (4) witnesses apart from himself, whilst the 2nd Defendant testified as sole witness on behalf of himself and the 1st Defendant.

Chijioke Ibegbulam [PW1] who testified pursuant to a *subpoena ad testificandum* issued at the instance of the Plaintiff stated that he is an architect by profession and knew the Plaintiff who called him on telephone sometime in May 2015 to inform him that he was out of town and his family was in great distress in that they were locked-in inside their compound, whereupon he hastened to the Plaintiff's residence at Parakou Street, Opposite Dabras Hotel but could not drive his car into the premises because the main entrance gate was locked and welded, and a big truck was also packed inside the premises with the rear close against the gate; that he was able to gain access into the compound through the pedestrian gate that was still open and went to the Plaintiff's flat where he saw the Plaintiff's wife and family who were very worried having been trapped in, and requested to be taken out of the place; that they hurriedly picked a few items/belongings and left with him through the pedestrian gate; and that the Plaintiff's family stayed with him for a couple of days before the Plaintiff made alternative arrangements.

Under cross examination by *Dr Onyechi Ikpeazu SAN* of counsel for the Defendants, the PW1 stated that he has known the Plaintiff for over 30 years and both of them hail from Ahiazu Local Government Area of Imo State; that the Plaintiff had been to his house in Abuja on several occasions; that the main gate was already welded when he got to the Plaintiff's residence and they did not pass through the main gate; and that it is false to suggest they went through the main gate before it was welded. The PW1 maintained that his focus was on the Plaintiff's family and could not remember seeing any other tenants when he arrived at the Plaintiff's residence; that he saw the Plaintiff's vehicle as well as a little Japanese car parked inside the premises; that the Plaintiff's wife drives a Hyundai car; that he met two of the Plaintiff's biological children of school age; that he did not take a look at what was inside the truck as he had no interest in its content; and that he walked in through the pedestrian gate and was neither denied access into the premises nor prevented from leaving with the Plaintiff's family. He insisted that the Plaintiff had not visited him previously with his wife and family; and that he could describe his residence in Wuse. The PW1 could not remember seeing the Plaintiff's wife's vehicle in the premises and denied that he physically carried the Plaintiff's wife and children from upstairs through the gate into his car. He could not also remember seeing anyone stationed at the door of the Plaintiff's flat to prevent anyone from leaving or entering; but insisted that the Plaintiff's family was with him for one or two weeks. He rejected the suggestion that the only reason he harboured the Plaintiff's family was because the Plaintiff was unable to secure alternative accommodation for them.

Oliver Ekweme [PW2] stated that he is a photographer and that he took some photographs for the Plaintiff sometime in May 2014. He identified the photographs and tendered them in evidence as Exhibits P1A – P1D. Under cross examination by *Dr Onyechi Ikpeazu, SAN* of counsel for the Defendants, the PW2 maintained that he is aware that there are cameras that produce

photographs showing the date they were taken; that he went to the place the Plaintiff took him just once; that he could not remember where he was the previous day; and that the whole place was sealed off and he did not see anyone in the house. He rejected the suggestion that henchmen/avengers were standing at the gate to prevent people from gaining access into the premises, insisting that he did not see any such henchmen/avengers there.

The inconclusive testimony of PW3 [*Ehirim Obianuju Gloria,* a banker with Ecobank Nigeria Ltd who was subpoenaed to produce the bank statement of *Alpha-Plus*] was expunged from the records; and the Plaintiff fielded one *Joy Onyema* [PW4] who stated that she is a banker with Diamond Bank PLC, Maitama Branch, Abuja; that a subpoena was served on the bank to produce account statements, drafts and copies of cheques/instruments relating to transactions between *Mr Ugochukwu Mbegbu* [Plaintiff] and *Alpha-Plus Associates Ltd* [1st Defendant] and that she had with her documents showing transfers made from *Mr Ugochukwu Mbegbu's* account to *Alpha-Plus's* account at EcoBank Nigeria Limited. She produced and tendered without objection a Certificate of Identification dated 24/4/18 on the letterhead of Diamond Bank PLC duly signed by her showing transactions and receipts/cheques in respect of deposits/transfers made on various dates between 11/07/13 and 08/01/15 from Account No. 0029947206 held by *Mr Ugochukwu Mbegbu* into Account No. 2202115523 held by *Alpha-Plus Associates Ltd* at EcoBank Nigeria Limited together with copies of the cheques and instant payment receipts as Exhibits P2A - P2I respectively. Under cross examination by *Ogechi Ogbonna, Esq.* of counsel for the Defendants, the PW4 maintained that she did not know the purpose for which the payment/transfers were made by *Mr Ugochukwu Mbegbu* to *Alpha-Plus*; and that debit and credit entries are reflected in a customer's statement of account, which is a summary of transactions in his/her account.

Testifying for himself as PW5, the Plaintiff [*Ugochukwu A. Mbegbu*] adopted his statements on oath dated 20/4/17 and 13/10/17 respectively, and tendered Exhibits P3 – P6. Exhibit P3 is a receipt dated 11/11/10 issued by Alpha-Plus; Exhibits P4A – P4N are Cash Receipts issued by *Ideas and Style Ltd* on various dates from 1/6/15 to 31/8/15; Exhibit P5 is a Medical Report dated 24/6/15; whilst Exhibit P6 is a Petition written by *Ugochukwu A. Mbegbu* to the Inspector-General of Police dated 27/7/15. Cross-examined by *Ogechi Ogbonna, Esq.* of counsel for the Defendants, the Plaintiff [PW5] maintained that he is a businessman who is accustomed to payment and receipt of moneys in respect of transactions; that he pays tax and knows that VAT is not payable for all services; that he was in Calabar on 25/5/15 and could be certain as to whether he was in Abuja on 26/5/15; that he is not aware of any civic duty imposed on him to report crimes to the police; and that although that he made a report to the Inspector-General of Police because he had confidence in the police, he did not lodge any complaint that some henchmen were preventing him from having access to his home. The PW5 conceded that he and the 2nd Defendant visited the Zonal Police Station at Wuse Zone 3 which is proximate; and stated that the 2nd Defendant wrote a petition against him to the Police at Zone 3 when he was away in Calabar and told the police when they called him on phone that he would report at the Station upon his return to Abuja; that he visited the Police Station between 26/5/18 and end of the month and the Defendants and some policemen attempted to bully him into issuing post-dated cheques but he stood his ground; and that he is not aware of any charge preferred against the Defendants or any police officer who was disciplined as a result of his petition to the Inspector-General of Police. The Plaintiff maintained that although he paid the initial rent by cheques and payment receipts were duly issued to him, he does not necessarily collect receipts for all payments made to the Defendants; that he did not witness what transpired on 25/5/18 as he was not in Abuja; and that he is 55 years old. The PW5 rejected the suggestion

that he notified the 1st Defendant of payments made and receipts were duly issued to him at all times; but conceded that there was a fire incident when he was the sole occupant in the premises. He insisted that he paid what he was asked to pay for services rendered to him by *Ideas and Styles Ltd*.

At the close of the Plaintiff's case, the 2nd Defendant, *Godwin Ijeoma* [DW1] adopted his 94-pragraphed statement on oath dated 26/9/17 and tendered Exhibits D7 – D10. Exhibit D7 is a Notice to Quit dated 3/2/14; Exhibit D8 is a letter dated 24/2/14; Exhibit D9 is a handwritten letter dated 27/11/13 by *Ugochukwu A. Mbegbu* to the Managing Director of *Alpha Plus Realty Company;* whilst Exhibit D10 is a petition dated 25/5/15 by *Alpha Plus Associates Ltd* to the Assistant Inspector General of Police, Zone A7, Abuja. Under cross examination by *Obi C. Nwakor, Esq*. of counsel for the Plaintiff, the DW1 maintained that *Ikechukwu Godwin Ijeoma* is one and the same person as *Engr. Godwin Ijeoma* and that he is the landlord in the sense that the property in question belongs to *APAL Properties Ltd* solely owned by him; that APAL is not an acronym; that Exhibit P3 is a receipt dated 11/11/10 issued by *Alpha Plus Associates Ltd* [1st Defendant] to *Ugochukwu Mbegbu* [Plaintiff] in acknowledgement of payment of rent, service charge, agency fee and legal fee for the [rental] period 2010 – 2012; that *Alpha-Plus Associates Ltd* is not the landlord but merely a company engaged in the business of construction and property management; that Exhibit P3 shows the relationship between the Plaintiff and *Alpha-Plus Associates Ltd* which received legal and agency fees from the Plaintiff whose tenancy commenced in September 2010 even though Exhibit P3 is dated 11/11/10; and that rent was increased from ₦4m to ₦4.4m with effect from 2012. He rejected the suggestion that the Plaintiff's rent was ₦3m from the end of 2012 or as at 2013, and denied saying that the Plaintiff did not make any payments after 2012 until he vacated the premises in 2015. He conceded that the provision of services is dependent on payment by the tenant but rejected the suggestion that the Defendants did not

provide any services as a result of the Plaintiff's failure or neglect to make payments from September 2013; and stated that the Defendants did not initiate proceedings to recover possession even though a quit notice was duly served on the Plaintiff; that other tenants vacated the premises but the Plaintiff refused to do so and he could not have been pleased with that, insisting that the Plaintiff's presence in the premises prevented him from renovating the entire premises comprising of seven (7) flats. The DW1 could not recall if the 3-bedroom flat occupied by the Plaintiff was upstairs but rejected the suggestion that the tenancy commenced after the Plaintiff paid rent; and stated that he was bringing materials to the premises for renovation purposes and the Plaintiff's presence was a hindrance to him. He rejected the suggestion that he never brought in any materials to the premises because the Plaintiff's presence was a hindrance; and stated that he made a report to the Police pointing his suspicion towards the Plaintiff as sole occupant when fire gutted the premises; that following his report, the Plaintiff, himself and a member of his staff were present at the Police Station but he had no right to know what statement the Plaintiff made to the Police; and that the Police at Zone 7 stopped their investigation because the Plaintiff took the matter to higher police authorities at the IGP's office. He denied requesting the Police at Zone 7 to help him recover the premises and/or moneys he is claiming against the Plaintiff; and insisted that he never mentioned arson at Wuse Police Station or at the IGP's office. The DW1 stated that construction materials are required for renovation depending on the scope of works to be done; that items were brought from their store for terminal repairs that were effected; and that the Plaintiff is indebted to him to the tune of over ₦7m. He maintained that the truck with Reg. No. XL 429 ABC belongs to *Alpha-Plus Associates Ltd* but denied parking the truck close to the gate and welding the gate in order to force the Plaintiff to vacate the premises because he was not pleased that the Plaintiff remained in occupation after other tenants had left. Re-examined by *Ogechi Ogbonna, Esq.* of counsel for the Defendants, the

DW1 maintained that his company usually issues receipts when payments are made to it.

At the close of plenary trial, the parties filed and exchanged written final addresses as enjoined by Order 33 of the Rules of this Court, which addresses were adopted by their respective counsel. The Defendants' final address and reply on points of law are dated 11/10/18 and 17/10/18 respectively, whilst the Plaintiff's final address is dated 15/10/18. The following two (2) issues are distilled in the Defendants' final address:

1. [Whether] the Plaintiff has discharged the burden of proving the allegations which he made against the Defendants.
2. Whether the Defendants have proved the counterclaim against the Plaintiff.

On the Plaintiff's part, two (2) issues are equally identified in the Plaintiff's final address as follows:

1. Whether from all the circumstances of this case, the facts pleaded and evidence adduced, the Plaintiff [has] not proved his case on preponderance of evidence/balance of probabilities entitling him to his claim.
2. Whether the Defendant[s] proved [their] counterclaim.

It can be gleaned from the foregoing that the issues distilled by the parties are essentially the same. There is a main claim and a counterclaim in these proceedings, and the law is well settled, if not elementary, that anyone [including a counterclaimant] who desires the court to give judgment as to any legal right or liability must prove those facts. Evidence is the basis of justice, and the rule of evidence is that he who asserts the positive must prove. See

OKAFOR v EZENWA [2003] 47 WRN 1 at 11 *–per Uwaifo JSC,* ***VULCAN GASES LIMITED v GESELLSCHAFT [2001] 26 WRN 1 at 59, ABIODUN v ADEHIN (1962) 2 SCNLR 305*** and ***MOROHUNFOLA v KWARATECH [1990] 4 NWLR (PT. 145) 506.*** Evidence is nothing but proof legally presented at the trial on an issue [see ***AKINTOLA v SOLANO (1986) 4 SC 141***]; and just as the burden of proof rests upon the claimant to establish the main claim, so it lies on the defendant to establish the counterclaim which, for all intents and purposes, is a cross-action, fresh and completely independent, separate and distinct from the one commenced by the original plaintiff. See ***PETERSIDE v I.M.B (NIG) LTD [1993] 2 NWLR (PT. 278) 712 at 731-732*** and ***IGE v FARINDE [1994] 7 NWLR (PT. 354) 42.*** A counterclaimant is therefore a claimant in his own right [see ***UNION BANK PLC v ISHOLA [2001] FWLR (PT. 81) 1868 at 1892***], and like all other claimants in an action, he must prove his case in order for him to obtain judgment. See ***OBMIAMI BRICK & STONE LTD v ACB LIMITED [1992] 3 NWLR (PT. 229) 260 at 298-299; JERIC NIGERIA LIMITED v UNION BANK OF NIGERIA PLC [2001] 7 WRN 1 at 18; PRIME MERCHANT BANK v MAN-MOUNTAIN COMPANY [2000] 6 WRN 130 at 134*** and ***WALTER v SKYLL NIG. LIMITED [2000] 13 WRN 60 at 98.*** In a civil action such as the present, the burden of proving the main claim [or the counterclaim] therefore rests on the party who would fail if no evidence were adduced on either side. See ***NATIONAL BANK OF NIGERIA LIMITED v U. C. HOLDINGS LIMITED [2004] 13 NWLR (PT. 891) 436 at 454 F-H, 461 G*** and ***UMEOJIAKO v EZENAMUO [1990] 1 NWLR (PT. 126) 253 at 267.*** But the burden of proof rests upon him who affirms and not upon him who denies, since by the nature of things he who denies a fact cannot produce any proof. See ***AROMOLARAN v KUPOLUYI [1994] 2 NWLR (PT. 325) 221, ARASE v ARASE (1981) 5 SC 33 at 37; ELEMO v OMOLADE (1968) NMLR 259*** and ***OSAWARU v EZEIRUKA (1978) 6-7 SC 135 at 145.*** This burden is not static as the proof or rebuttal of issues which arise in the course of proceedings may shift from the plaintiff to the defendant and vice versa as the matter progresses. See ***OSAWARU v EZEIRUKA supra*** and ***ZUBAIRU v***

MOHAMMED (2009) LPELR-5124 (CA). Also, where a party wishes the court to believe in the existence of any fact, the burden of proving that fact lies on that party. See generally ***ss. 133 - 137*** of the ***Evidence Act, 2011***. Against the backdrop of the foregoing, I will permit myself to condense the issues distilled by the parties into a single all-embracing, composite issue for determination as follows:

> Whether the Plaintiff established the main claim on the one hand, and the Defendants/Counterclaimants established the counterclaim on the other hand, such that either side is [or both sides are] entitled to judgment in these proceedings.

It is on the basis of the above sole issue for determination that I shall proceed presently to dispose of this matter, the facts of which are straightforward and by no means complex or convoluted. As stated hereinbefore, the parties filed and exchanged written final addresses which were adopted by their respective counsel. I will refer to the submissions contained in the said written addresses as I consider relevant or necessary.

The reliefs sought in the main claim and counterclaim are set out hereinbefore. The Plaintiff's case is that he was at all material times a tenant of a 3-bedroom flat with one room boys' quarter situate at Plot 63 Parakou Crescent, Wuse II, Abuja from 2010 to 25/5/15 when the Defendants interfered with his peaceable enjoyment/possession and precipitated his forceful eviction therefrom by blocking the entrance gate with the 1st Defendant's 20-ton truck with Reg. No. XL 429 ABJ on 25/5/15 and welding same together, thereby putting his family in great distress whilst he was out of town on a business trip to Calabar. The Plaintiff maintained that he received a distress call from his wife who informed him that the 2nd Defendant and *alter ego* of the 1st Defendant accompanied by some workmen had parked the truck directly behind the gate to prevent ingress to and egress from the

premises, and were welding the entrance gate, whereupon he called and pleaded with his friend, *Chijioke Ebegbulem* [PW1] who intervened promptly and managed to whisk his family away before the gate was finally welded together; that upon his return to Abuja the following day [being 26/5/15], he saw for himself that the gate had been welded together and the truck parked directly behind the welded gate to prevent access into the premises, whilst some fierce looking henchmen who were keeping watch at the gate informed him that they had the strict instructions of the 2nd Defendant not to let anyone come near the premises comprising of six flats and a pent house, but he was the only tenant/occupant at the time; that he made several efforts to reach the 2nd Defendant on phone to no avail, and in particular, his physical plea with the 2nd Defendant at the Zonal Police Station, Wuse Zone 3, Abuja to be allowed to remove his Land Rover LR3 Model with Reg. No. Abuja GWA 573 AA and other property/personal effects of his family members fell on deaf hears; that he was constrained by the sealing off of the premises to squat with friends and relatives and sometimes in hotels, whilst his family equally squatted from place to place including staying with the PW1; that all efforts to persuade the Defendants to unseal the premises to enable him remove his vehicle proved abortive and he had to resort to hiring vehicle from *Ideas and Style Ltd* at a daily rate of ₦20,000.00 with effect from 1/6/15 until 3/9/15 when the 2nd Defendant reluctantly re-opened the gate at the intervention of the Office of the Inspector General of Police consequent upon his petition against the Defendants whose action of sealing the entrance gate of the premises without obtaining a court order in accordance with due process of law constitutes self-help, trespass and forceful eviction; and that he was subjected to severe stress, pain and suffering, irreparable emotional and psychological distress and depression, financial loss and damage as a result of the Defendants' action. But the Defendants denied welding any of the two gates in the premises on 25/5/15 or at all, and insisted that the truck with Registration No. XL 429 ABC was merely parked inside the premises to

offload building materials for purposes of effecting renovation [and not to prevent entry into or exit therefrom] but it unfortunately broke down in the process and was subsequently towed away. Who is right and who is wrong? Let us find out presently.

I have given a careful and insightful consideration to the evidence adduced by and on behalf of the parties. The photographs captured on 28/5/15 and tendered in evidence as Exhibits P1^{A-D} show the entrance gate of Plot 63 Parakou Crescent, Wuse II, Abuja as having been welded together and a truck with Registration No. Abuja XL 429 ABC parked directly behind the welded gate in a manner that renders driving in and out of the premises impossible. Whereas the Plaintiff maintained that the 20-ton truck was parked directly behind the welded entrance gate from 25/5/15 until 3/9/15 when the 2nd Defendant reluctantly reopened the gate following the intervention of the Office of the Inspector General of Police to which he had lodged a petition [Exhibit P6] and that he lost the use of his Land Rover LR3 vehicle during the period and had to resort to hiring vehicles to enable him commute within and outside Abuja, the Defendants denied welding the entrance gate but stated that the truck "*unfortunately broke down whilst offloading materials for renovation and was subsequently towed from the property*". It cannot escape notice that quite contrary to the statement of defence and witness statement of DW1 [wherein it is averred that the Defendants brought building materials with a view to renovating vacant apartments at Plot 63 Parakou Crescent, Wuse II, Abuja in a commercial truck with Registration No. XL 429 ABC which unfortunately broke down whilst the materials were being offloaded], the DW1 conceded under cross examination that the said 20-ton truck actually belongs to the 1st Defendant, even as there is no evidence of the said building materials. It equally cannot escape notice that the Defendants did not state the length of time the truck remained in its alleged broken-down position before it was eventually towed away.

In the light of the Plaintiff's insistence that the truck was parked behind the entrance gate from 25/5/15 until 3/9/15, the Defendants' failure or neglect to indicate when they eventually removed the truck from its alleged broken-down position seems to me quite curious, if not an attempt at cover up. The PW1, PW2 and PW5 who were not discredited under cross examination gave direct evidence of what they saw, namely: that the main entrance gate to the premises was welded together and the truck parked inside the demised premises directly behind the welded gate. Thus, notwithstanding that the Plaintiff's wife [who was said to have put a distress call to her husband on 25/5/15 when she saw that the main entrance gate was being welded by the 2nd Defendant and workmen engaged by him] was not fielded as a witness, it seems to me that there is sufficient available circumstantial evidence to fix the Defendants with liability. The fact that the main entrance gate was *in fact* welded shut [as shown in Exhibits P1A – D] at a time the Plaintiff was the sole occupant in the premises, coupled with the fact that the 1st Defendant's 20-ton truck [which allegedly broke down in the process of offloading building materials] was conveniently and/or neatly parked closely behind the welded gate inside the premises [also as shown in Exhibits P1A – D] and the court was not told how long it took before the truck was allegedly 'subsequently towed away', point compelling to the Defendants' active interference with the Plaintiff's peaceable enjoyment/possession with a view to unlawfully evicting him without recourse to due process of law. I accept and believe the testimonial evidence of PW1 [that the main gate was welded shut and the rear of the 20-ton truck parked so close against the gate inside the premises such that he could not drive into the premises but gained access through the pedestrian gate and was able to rescue the Plaintiff's wife and children who were traumatised and requested to be taken away] as a credible account of what transpired on 25/5/15. It is also quite instructive that the Defendants did not deem it necessary to cross-examine the Plaintiff [PW5] on his testimony that the demised premises were not unsealed until 3/9/15 when the

2nd Defendant reluctantly reopened same following the intervention of the Office of the Inspector-General of Police to which it had lodged a petition [Exhibit P6]. The obvious legal implication therefore is that this crucial piece of evidence remains unchallenged and uncontroverted. It has been held that failure to cross-examine a witness on an issue constitutes an acceptance of the truth of the evidence of that witness in respect of that issue. See the cases of ***ABADOM v THE STATE [1997] 1 NWLR (PT. 479) 1 at 20; R v HART (1932) 23 C. A. R. 202; NJIOKWUEMENI v OCHEI [2004] 15 NWLR (PT. 859) 196 at 226 -227*** and ***NITEL LTD v IKPI [2007] 8 NWLR (PT. 1035) 109.***

It is commonplace that *'possession is nine-tenths of the law*'. Indeed, a tenant may be described as 'an enigmatic character that the law hates but protects'. By ***s. 2(1)*** of the ***Recovery of Premises Act, Cap. 544 Laws of the Federation (Abuja) 1990***, a tenant (which includes a subtenant) is any person occupying premises whether on payment of rent or otherwise, but does not include anyone occupying premises under a bona fide claim to be the owner thereof. See ***SOBAMOWO v THE FEDERAL PUBLIC TRUSTEE (1970) ALL NLR 261*** and ***ELOICHIN NIGERIA LTD v MBADIWE [1986] 1 NWLR (PT. 14) 47.*** Once it is shown that a person is occupying premises lawfully, the law treats him as a tenant notwithstanding that he does not pay rent regularly or pays a subsidised rent or indeed pays no rent at all. See ***ODUYE v NIGERIA AIRWAYS [1987] 2 NWLR (PT. 55) 126.*** It is the initial lawful entry into possession that brings a person within the ambit of protection of the law such that possession can only be wrested from him/her by due process of law i.e. by an order for possession made by a court or other competent tribunal against him after due notices to quit and of intention to apply for possession as prescribed by law or in the agreement of the parties. See ***AFRICAN PETROLEUM LTD v OWODUNNI supra at 413 E-F*** and ***SULE v NIGERIA COTTON BOARD [1985] 1 NWLR (PT. 5) 17.***

The undisputed fact that has emerged in these proceedings is that the Plaintiff entered into lawful possession of the demised premises sometime in 2010 at an annual rent of ₦4m. The Defendants alleged that the Plaintiff failed or neglected to pay any rent since 2012 when the initial two-year rent paid by him expired, whilst the Plaintiff claims to have made several electronic transfers and/or cheque lodgments into the 1st Defendant's account at EcoBank in furtherance of his rent obligations to the Defendants; but the Plaintiff's status as a lawful tenant remains unimpaired and possession could only be wrested from him by due process of law. It seems to me therefore that the welding of the main entrance gate and/or allowing the 20-ton truck [that allegedly broke down whilst offloading building materials] to remain in the position shown in the photographs [Exhibits P1A–D] which constrained the Plaintiff's family to hurriedly vacate the premises on 25/5/15 with the timely assistance of PW1 whilst the Plaintiff was out of town are actions calculated by the Defendants to wrest possession from the Plaintiff by means other than due process of law.

The Plaintiff seeks a declaration that the sealing off of Plot 63 Parakou Crescent, Wuse II, Abuja by welding together of the gate and parking a 20-ton truck with Reg. No. Abuja XL 429 ABC belonging to the 1st Defendant, by the Defendants without recourse to due process of law amounts to forceful ejection, which is reprehensible, high handed and an abuse of the rule of law. It is contended on behalf of the Defendants that the owner of a property cannot be deemed liable for trespass on the property by reason of the presence of his person or chattel on such property which is not in the exclusive possession of the tenant; and that unless the tenant alleging trespass can show better title, the owner is deemed by law to be in possession, citing ***DANJUMA v S. C. C. NIG LTD supra at 203-204***. I am afraid the above contention fails to appreciate the legal incidents that attend the relationship between a landlord and his tenant. It cannot be overemphasised that a tenant has a basic right to

exclusive use and possession of leased premises and a landlord has a corresponding basic obligation not to interfere with that right. The rights generally conferred on a tenant include the right to peaceful and exclusive enjoyment of demised property and the right against unlawful, forceful or illegal ejection or even interference from any one including the landlord during the currency of the tenancy. A landlord who has yielded possession to a tenant cannot claim to remain in possession. Rather, he is merely entitled to the reversionary title at the end or sooner determination of the tenancy and has no unbridled right to invade premises in the lawful occupation of a tenant with the intention of recovering possession upon the tenant's refusal or neglect to pay rent. What is in issue here is not the mere presence of the landlord or his chattel in the demised premises. No. Quite the contrary, the facts disclosed in the instant case show that the Defendants deployed unorthodox means to wrest possession from the Plaintiff. It is no doubt annoying and frustrating for a landlord to watch helplessly his property in the hands of an intransigent tenant who is paying too little for his holding, or keeps the premises untidy, or is irregular in his payment of rents or is otherwise an unsuitable tenant for the property. Thus, it could be tempting indeed for the landlord to simply walk into the property and retake immediate possession, but that is precisely what the law forbids. *See* ***ELOICHIN (NIG) LTD & ORS v MBADIWE supra.*** The Supreme Court held in ***ONI v DADA (1957) SCNLR 258*** that "*[e]ven if a tenant commits a breach of his agreement with his landlord, it does not justify the landlord taking the laws into his own hands by summarily terminating the tenancy or unlawfully ejecting the tenant.*" See also ***IHEANACHO v UZOCHUKWU (1977) 1 SCNJ 128*** and ***DICKSON & ANOR v ASSAMUDO (2013) LPELR-20416(CA)*** *–per Garba JCA*. The laws of all civilized nations have always frowned at self-help and in particular the deployment of unorthodox means to evict a tenant, if for no other reason than that they engender breaches of peace. See ***ELOICHIN NIG LTD & 2 ORS v VICTOR NGOZI MBADIWE supra.*** Even where the tenancy has come to an end, a landlord is not at liberty to

enter the premises to physically throw out the tenant or otherwise orchestrate his eviction by unconventional means. See ***SULE v NIGERIAN COTTON BOARD [1985] 2 NWLR (PT. 5) 17, MCPHAIL v PERSONS UNKNOWN (1973) 3 All E. R. 393*** *–per Lord Denning* ***GOVERNOR OF LAGOS STATE v OJUKWU [1986] 1 NWLR (PT. 18) 621 at 648*** *–per Oputa JSC* and ***AGBOR v METROPOLITAN POLICE COMMISSIONER (1969) I WLR 703*** *–per Lord Denning*. It hardly bears mention that possession can only be wrested from a tenant by the procedure prescribed in the Recovery of Premises Act, and I have already held that the Defendants interfered with the Plaintiff's peaceable enjoyment and possession and precipitated his unlawful eviction on 25/5/15 without recourse to due process of law. I reckon therefore that he eminently entitled to the declaration sought.

Relief 2 is for ₦20m as general damages for trespass. The law is well settled that a landlord who brushes aside the necessity of obtaining an order of court for possession and jettisons the rule of law by entering upon demised premises and/or taking possession by unorthodox means has invaded, and committed an infraction of, the rights of the tenant and renders himself liable in trespass, which is actionable *per se* and damages are recoverable even where the claimant does not suffer actual loss or damage. General damages are such as the law presumes to be the direct, natural or probable consequence of the wrongful act complained of. They are always made as a claim *at large* and the quantum of damages need not be pleaded. The award is quantified by what in the opinion of a reasonable person is considered adequate compensation for the loss or inconvenience which flow naturally as generally presumed by law, from the act of the Defendant. It does not depend upon calculation made and figure arrived at from specific items.

Relief 3 is for the sum of ₦150,000,000.00 as exemplary/punitive damages. A claim for exemplary damages [otherwise known as punitive or vindictive damages] postulates that the defendant's action is such that the damages to be awarded are intended not merely as compensation for the injured plaintiff but also to punish the defendant and vindicate the strength or potency of the law. See ***ALLIED BANK OF NIGERIA LIMITED v JONAS AKUBUEZE [1997] 6 NWLR (Pt. 510) 374.*** The English case of ***ROOKES v BARNARD (1964) AC 1129*** donates the proposition that exemplary damages will be awarded only in three instances, namely: (a) where there is an express authorization by statute; (b) in cases of oppressive, arbitrary or unconstitutional action by servants of the government; and (c) where the defendant's conduct was calculated by him to make a profit for himself, which might well exceed the compensation payable to the plaintiff. The Supreme Court subjected ***ROOKES v BARNARD supra*** to critical analysis in ***ELOICHIN NIG LTD & 2 ORS v VICTOR NGOZI MBADIWE supra*** [where one of the two issues for determination was whether the award of exemplary damages in Nigeria is circumscribed to the above three instances only] and held [*per Obaseki JSC*] that:

> *"The primary object of an award of damages is to compensate the plaintiff for the harm done to him or a possible secondary object is to punish the Defendant for his conduct in inflicting that harm. Such a secondary object can be achieved by awarding, in addition to the normal compensatory damages, damages which go by various names to wit; exemplary damages, punitive damages; vindictive damages, even retributory damages can come into play whenever the Defendant's conduct is sufficiently outrageous to merit punishment as were it discloses malice, fraud, cruelty, insolence, flagrant disregard of the law and the like."*

The legal principle that has crystallised therefore is that the award of exemplary damages would be justified where it is demonstrated by credible evidence not merely that the defendant committed the wrongful act complained of, but also that he conducted himself in a fraudulent, high-

handed, outrageous, insolent, vindictive, cruel, oppressive or malicious or the defendant's conduct amply deserves punishment for being wanton or where he acts in contumelious disregard of the plaintiff's rights or in complete disregard for the very principles that undergird the conduct of civilized men without any constraints as to whether the defendant is a servant of the government or not. See ***ODIBA v AZEGE [1998] 9 NWLR [PT. 566] 370 at 385-387*** *–per Mohammed JSC,* ***NAUDE v SIMON (2013) LPELR-20491(CA)*** *–per Akomolafe-Wilson, JCA,* ***UNIVERSITY OF CALABAR v ORJI [2012] 3 NWLR (PT. 1288) 418*** and ***ZENITH BANK PLC v EKEREUWEM (2012) 4 NWLR (PT. 1290) 207***. It is therefore still good law that exemplary damages can be awarded by Nigerian courts when claimed and proved.

In the case at hand, the Defendants orchestrated the Plaintiff's eviction without regard for his right to peaceable enjoyment and possession of the demised premises and the rule of law which enjoin them to recover possession from a tenant only by due process of law. The DW1 stated under cross examination that he was not pleased that other tenants vacated the premises but the Plaintiff refused to do so and that the Plaintiff's presence in the premises prevented him from renovating the entire premises comprising of seven (7) flats. The takeaway is that the Defendants were obviously vexed that the Plaintiff remained in possession after other tenants had left and decided to teach him a lesson by welding the main gate and blocking it with their 20-ton truck to prevent ingress into and egress from the demised premises in order to force him to vacate the premises, and they succeeded in doing just that. Aside from rendering the Plaintiff and members of his immediate family homeless and constraining them to squat from place to place with friends and at hotels, the Plaintiff was effectively prevented from gaining access into the premises to enable him remove his Land Rover LR3 vehicle as well as personal effects and other property from the apartment until 3/9/15 when the premises was reopened. I consider the conduct of the Defendants sufficiently outrageous,

oppressive, cruel, vindictive and contrary to the principles that undergird the conduct of civilized men to warrant the award of exemplary damages.

The claim in relief 4 is for ₦1,880,000.00 as special damages incurred in hiring vehicles for daily commuting and other activities from 1/6/15 to 3/9/15. Special damages are such as the law will not presume or infer from the nature of the act or breach complained of. They are exceptional in their character and do not follow in ordinary course but connote specific items of loss which the claimant alleges are the result of the defendant's breach of duty. See ***BENJAMIN OBASUYI & ANOR v BUSINESS VENTURES LIMITED [2000] 5 NWLR (PT. 658) 668, [2000] WRN 112 at 131*** and ***STROMS BRUKS AKTIE BOLAG v HUTCHINSON (1905) A.C. 515*** –*per Lord Macnaghten*. Quite unlike general damages, special damages must be claimed specifically and strictly proved by credible evidence of particular losses which are known and accurately measured prior to the trial; and the court is not entitled to make its own estimate of the same. See ***IMANA v ROBINSON (1979) 3-4 SC 1 at 23, ABDUL JABER v MOHAMMED BASMA (1952) 14 W.A.C.A. 140, DUMEZ (NIGERIA) LTD v PATRICK OGBOLI (1972) 1 ALL N.L.R. 241, AGUNWA v ONUKWUE (1962) 2 SCNLR 275, OLADEHIN v CONTINENTAL TEXTILE MILLS LIMITED (1978) 2 SC 23, ATTORNEY GENERAL, OYO STATE v FAIRLAKES HOTELS (No. 2) [1989] NWLR (PT. 121) 255, (1988) 12 S.C. (PT. I) 1, X. S. (NIG.) LTD v TAISEI (W.A.) LTD [2006] 15 NWLR (PT. 1003) 552*** and ***C. A. P. PLC v VITAL INVESTMENTS LTD [2006] 6 NWLR (PT. 976) 220 at 260 - 261.***

In the case at hand, the Plaintiff specifically pleaded and testified that all entreaties to the 2nd Defendant to unseal the entrance gate of Plot 63 Parakou Crescent to enable him access and remove his Land Rover LR3 Jeep with Registration No. Abuja GWA 573 AA [which was parked in the premises when he travelled out of town] proved abortive and he was constrained to hire vehicles from *Ideas & Style Limited* from 1/6/15 to 2/9/15 amounting to

₦1,880,000.00, which sum he claims as special damages. The Plaintiff equally tendered as Exhibits P4A – P4N being cash receipts issued by *Ideas & Style Limited* in acknowledgement of payments made by him in hiring vehicle for his daily commuting and other activities. It seems to me therefore that the Plaintiff has discharged the evidential burden of proving the special damages claimed by him on a balance of probabilities.

It is forcefully contended on behalf of the Defendants that "*the Plaintiff also alleged in paragraph 5 of his Statement of Claim that a Land Rover LR3 model* ***belonging*** *to him which was parked in the premises and was welded in, which prevented him from having access to the car and using same, whereas the PW1 under cross examination testified that he only saw an alleged Japanese car whose make he did not state, and not a Land Rover LR3 or any other car*". I am afraid this is a clear distortion of the testimony of PW1 who maintained both in his evidence in chief and under cross examination that he saw the Plaintiff's Land Rover Jeep parked in the premises. Where the Defendants got this version of evidence is lost on me as their contention is not borne out by the records.

The Defendants also argued that the Plaintiff neither pleaded nor tendered in evidence any receipt or other proof of ownership to show that the Land Rover LR3 or any other car allegedly parked in the premises either belongs to him or his wife, nor did he demonstrate that the said vehicle was roadworthy, insisting that even a validly owned car may not be roadworthy and unavailable for use. But I am not enthused in the least by this argument because no issues were joined in the pleadings on the ownership or roadworthiness of the Land Rover LR3 Model, the use of which the Plaintiff maintains he was denied by reason of the Defendants' action. Whereas the Plaintiff averred in paragraph 5 of the Amended Statement of Claim that he hurriedly returned from his business trip on 26/5/15 and saw for himself that not only was the entrance gate to

the premises welded together, the 1st Defendant's 20-ton truck with Reg. No. XL 429 ABC was parked directly behind the welded gate to prevent access into the premises with some henchmen posted thereat, and the "*vehicle he parked in the premises whilst traveling, a Land Rover LR3 model with registration No. Abuja GWA 573 AA was equally welded inside the premises*", the Defendants merely denied the said allegations without putting the ownership or roadworthiness of the vehicle in issue. It hardly bears mention that parties as well as the court are bound by the pleadings filed and exchanged. See ***GEORGE v DOMINION FLOUR MILLS LTD (1963) NLR 74*** and ***REGD. TRUSTEES OF THE APOSTOLIC CHURCH v OLOWOLENI (1990) SCNJ 69.*** In our adjectival law, an issue in a civil action conducted by pleadings emerges only where the court, upon a comparison of the averments in the statement of claim and the statement of defence, identifies the matters actually in dispute between the parties and upon which it is necessary to lead evidence. The isolation of issues truly in dispute from those not in dispute enables the court to save valuable time and cost and it is by this process that the court is enabled only to receive evidence on matters in respect of which the parties are in dispute. *See* ***ADEDEJI v OLOSO [2007] ALL FWLR (PT. 356) 610 at 634-635*** *(per Oguntade, JSC)* and ***INDIA GENERAL INSURANCE COMPANY v THAWARDES (1978) 3 SC 143.***

The Defendants equally placed reliance on the cases of ***ONWUZURUIKE v EDOZIEM [2016] 6 NWLR (PT. 1528) 215 at 241 -242, OGORO v SEVEN-UP BOTTLING CO. PLC [2016] 13 NWLR (PT. 1528) 1 at 30, JULIUS BERGER NIGERIA PLC v OGUNDEHIN [2014] 2 NWLR (PT. 1391) 388 at 441 - 442*** and ***THE REGISTERED TRUSTEES OF THE LIVING BREAD CHRISTIAN CENTRE v OLUBOKUN [2017] 1 NWLR (PT. 1545) 1 at 52*** in urging the court to discountenance and treat as inadmissible the receipts relied upon by the Plaintiff as evidence of car rentals since their maker was not called to testify, insisting that it is trite law that documentary evidence can only be tendered through its maker, and the dictum of *Ogbuagu JSC* in ***UNIVERSAL TRUST BANK***

OF NIGERIA v OZOEMENA [2007] 3 NWLR (PT. 1022) 448 at 492 D [to the effect that "*production of a receipt as evidence of payment is sufficient proof of special damages notwithstanding that the maker of the receipt was not called to adduce oral evidence...*"] was made *obiter*. It seems to me however that the above contention clearly loses sight of the unambiguous provisions of s. 83 (2) (a) of the Evidence Act 2011 which confers a discretion on the court to admit a document or other statement in evidence notwithstanding that the maker of the statement is available but is not called as a witness. See ***IGBODIM v OBIANKE (1976) NMLR 212 at 219, AUDU v AHMED (1990) 5 NWLR (PT 150) 287 at 297*** and ***UNITY BANK PLC v RAYBAM ENGINEERING LTD (2017) LPELR-41622 at pp. 15-19*** *–per Ogakwu JCA*. Generally speaking, a receipt is a document signifying that goods or services have been paid for: it constitutes evidence of payment of money. See ***ETAJATA v OLOGBO [2007] 16 NWLR (PT. 1061) 554 at 592*** *–per I. T. Muhammad, JSC*. It is a document whereby the receipt or deposit of money is acknowledged or expressed. See ***GENERAL COUNCIL OF THE BAR (ENGLAND), INLAND REVENUE COMMISSIONERS (1909) 1 KB 462 at 471.***

I take the considered view that a person to whom a receipt is issued in acknowledgment of payment made by him is eminently entitled to produce and rely on same in evidence without the necessity of calling the issuer. Even though he is not the maker of the receipt, the content of the receipt merely acknowledges the payment made by him and he is in a good position as the issuer to answer any queries relating thereto. The object of requiring the production of a document by its maker is to enable the maker give direct positive evidence of its content and be cross examined upon it. See ***G. CHUTEX IND. LTD v OCEANIC BANK INT'L LTD [2005] 14 NWLR (PT. 945) 392*** and ***NBC PLC v UBANI [2009] 3 NWLR (PT. 1129) 512 at 541.*** In this connection, it occurs to me that a receipt is not in the class of documents expressing expert or other opinion peculiarly within the knowledge of the maker concerning

which the person to whom it is issued cannot give proper account of. Thus, in a civil action (such as the present) where the evidential burden is not static but preponderates, when a party has tendered and relied on receipts issued to him by a third party in acknowledgment of payments made by him, it is incumbent on the adverse party who seeks to impugn the receipts to lead contrary evidence with a view to discrediting them. That, to my mind, is the import and implication of s. 133 (1) and (2) of the Evidence Act 2011 which provides that if the party upon whom the burden of first proving the existence or non-existence of a fact adduces evidence which ought reasonably to satisfy the court that the fact sought to be proved is established, the burden shifts to the adverse party. To uphold or sustain the Defendants' contention would be tantamount to saying that a lawyer cannot tender and rely on degree or call to bar certificate in evidence unless the authorities of his university or the Nigerian Law School/Council of Legal Education are called as witness; or an employee suing his employer for wrongful termination cannot rely on his letter of employment without calling his employer (being the maker) as a witness to tender same; or a political party agent who was given a counterpart copy of result sheet at a polling station cannot tender the same in evidence unless the maker [i.e. INEC] is called as a witness, etc. The implications of the Defendants' submission are far-reaching and beyond the contemplation of the law; and it is certainly not the law that documentary evidence must of necessity be tendered by the maker at all times. The person to whom a document is issued can also produce it in court as in the instant case. See ***ALARIBE v OKWUONU (2015) LPELR-24297 (CA), OMEGA BANK PLC v OBC LTD [2006] 4 WRN 1 at 43*** *and* ***HEALTHCARE PRODUCTS NIG. LTD v BAZZA [2004] 3 NWLR (PT. 861) 582*** where it was held that the production of receipt would serve as strict proof of payment even without calling the recipient of such payment to testify in Court. I therefore find and hold that payment receipts tendered by the Plaintiff are not only admissible without the necessity of calling the maker, I am equally eminently entitled to ascribe probative value to them as the

Defendants did not impugn their credibility in any tangible way. It is settled law that where evidence is given by a party and is not contradicted by the other party who has the opportunity to do so, the court should accord credibility to such evidence insofar as it is not inherently incredible and does not offend any rational conclusion or state of physical things. See ***OKOEBOR v POLICE COUNCIL [2003] 12 NWLR (PT. 834) 444, OMOREGBE v LAWANI (1980) 3 - 4 SC 108 at 117*** and ***MAINAGGE v GWAMMA (2004) 7 SC (PT. 11) 76 at 92 .***

Let us shift attention presently to the counterclaim, which, as stated hereinbefore, is an independent action completely separate and distinct from the main claim and must be proved on preponderance of evidence as any other civil matter. Where a defendant fails to prove his counterclaim, his action fails and will be dismissed. See ***USMAN v GARKE [2003] 9 MJSC 115 at 133*** *–per Niki Tobi, JSC).* The Defendants must therefore adduce credible evidence in order for the counterclaim to succeed. Did they succeed in discharging this burden? We shall find out presently.

The gist of the counterclaim is that the Plaintiff is indebted to the 1st Defendant to the tune of ₦8,109,835.29k as unpaid rent and service charge for the use and occupation of all that 3-bedroom flat and boys' quarter at Plot 63 Parakou Crescent, Wuse II, Abuja from 10th September 2013 to May 2015 when possession was given up, as well as cost of terminal repairs said to have been effected by them. A breakdown of the Plaintiff's alleged indebtedness is given as follows: (a) ₦3,000.000.00 as outstanding rent from 10th September 2013 to 9th September 2014; (b) ₦805,599.16 as service charge as at 28th February, 2014; (c) ₦3,116,666.66 as arrears of rent from 10th September 2014 to May 2015; (d) ₦878,969.03 as service charge (excluding generator usage) from March 2014 to May 2015; and (e) ₦308,600.00 as expenditure

on some terminal repairs. The Defendants/Counterclaimants equally claim ₦24.5m as rent they would have earned for one year upon renovating and letting out the six (6) dwelling units in Plot 63, Parakou Crescent, Wuse II, Abuja if the Plaintiff had not frustrated the renovation; pre-judgment and post-judgment interests at the rate of 5% above the prevailing CBN rate and 10% respectively; as well as ₦5m damages.

The Plaintiff denied being indebted to the 1st Defendant as counterclaimed, insisting that he made payments totalling ₦6,050,000.00 into the 1st Defendant's account at EcoBank Nigeria Ltd towards his rent on various dates between 15/8/13 and 15/1/15. The Plaintiff tendered [through PW4] and relied on Exhibits P2A - P2I in proof of cheque lodgements and/or electronic money transfers made into the 1st Defendant's Account No. 2202115523 at EcoBank Nigeria Ltd; and insisted that his rent was never increased from ₦4 to ₦4.4m at any time.

Now, the relationship between a landlord and his tenant is always a bilateral affair steeped in contract (express or implied), and the terms and conditions of this contractual relationship [inclusive of the rent payable by the tenant to the landlord] are always borne out of mutuality of mind and purpose such that they cannot be varied or altered by one party without the concurrence of the other. See ***UDIH v IZEDONMWEM [1990] 2 NWLR (PT. 132) 357***. The contractual relationship of landlord and tenant does not brook any unilateral or autarchic actions by either party. The rent payable for demised premises is always a matter of agreement, and unless there is c*onsensus ad idem* between the parties, any unilateral decision by the landlord to increase the rent payable would be construed as a mere offer or proposal which is ineffective and non-binding on the tenant, in which case the *status quo ante* will be

maintained and the original agreed rent subsists. See ***COBRA LIMITED v OMOLE ESTATES & INVESTMENTS LIMITED [2000] 5 NWLR (PT. 655) 1 at 15*** and ***YAHAYA v CHUKWURA [2002] 3 NWLR (PT. 753) 20***. In the instant case, the parties are *ad idem* that the 3-bedroom flat and one room boys' quarter at Plot 63 Parakou Crescent, Wuse II, Abuja was demised unto the Plaintiff sometime in 2010 at an annual rent of ₦4m. Since there is no scintilla of evidence showing that the parties mutually agreed to any rent increment, I entertain no reluctance whatsoever in rejecting the Defendant's contention that the Plaintiff's rent was increased at all material times.

In regard to the payments made by the Plaintiff into the 1st Defendant's EcoBank account as aforesaid, it is forcefully contended on behalf of the Defendants that "*the Plaintiff did not tender any receipt of payment issued to him by the Defendants to acknowledge receipt of the above stated alleged sum of money*". I reckon however that the mere fact alone that receipts were not issued by the 1st Defendant in acknowledgment cannot be taken to mean that no payments were made by the Plaintiff in the peculiar facts and circumstances of this case. The law, as I have always understood it, is that a party alleging payment of money must furnish particulars as to when the payment was made and copies of the payment document such as cheques or other instrument by which the payment was made, or an acknowledgment or receipt issued by the person to whom the payment was made. See ***ISHOLA v SOCIETE GENERALE BANK (NIG) LTD [1997] 2 NWLR (PT. 488) 405, AEROFLOT v. U. B. A. [1986] 3 NWLR (PT. 27) 188, JOLABON INV. (NIG) LTD v OYUS INT'L CO. (NIG) LTD [2015] 18 NWLR (PT. 1490) 30 at 42 - 43, SALEH v BANK OF THE NORTH LTD [2006] 6 NWLR (PT. 976) 316*** and ***OKOLI v MORECAB FINANCE (NIG) LTD [2007] 14 NWLR (PT. 1053) 37***. In the case at hand, the Plaintiff caused a *subpoena* to be issued on Diamond Bank PLC and

the PW4 [*Joy Onyema*] not only gave evidence of cheques lodged and electronic money transfers made by the Plaintiff to the 1st Defendant's EcoBank Account No. 2202115523 amounting to ₦6,050,000.00, she equally produced and tendered copies of the said cheques/instruments of transfer as Exhibits P2A - P2I. To my mind, this constitutes sufficient proof that the Plaintiff made payments to the Defendant as alleged; and since this is a civil case in which the evidential burden of proof is not static but preponderates, the burden effectively shifted to the Defendants to disprove that the said payments by way of cheque lodgements and electronic money transfers were made to it. But it is noteworthy that the Defendants failed to lead any evidence to show that they did not receive the payments or that the cheque lodgements/electronic money transfers did not reach the 1st Defendant's Ecobank account. Rather, the Defendants' contention is that Exhibits P2A - P2I did not indicate the purpose(s) for which the payments were made, which does not impress me at all. There being no evidence of any other transaction between the parties for which payment is due from the Plaintiff to the Defendants, the inescapable logical inference is that the payments were made in satisfaction of obligations arising from the Plaintiff's occupation of the premises. At any event, the testimony of DW1 under cross examination is that he never said the Plaintiff did not make any payments after 2012 until he vacated the premises in 2015, which is a roundabout way of admitting that that the Plaintiff made some payments.

Now, whereas the evidence adduced before me shows that annual rent for the 3-bedroom flat and 1-room boys quarter occupied by the Plaintiff was ₦4m, the Defendants/Counterclaimants specifically claimed the sum of ₦3m *as "outstanding rent from 10th September 2013 to 9th September 2014"* and ₦3,116,666.66 as *"Arrears of Rent from 10th September 2014 to May 2015"*.

What this implies is that the total counterclaim for arrears of rent from September 2012 to May 2015 is ₦6,116,666.66. A party is, of course, eminently entitled to claim less than what he is legitimately entitled; and this court, not being Father Christmas, will not grant more than the amount claimed by the Defendants/Counterclaimants. See ***EKPENYONG v NYONG*** (1975) 2 SC 71 and ***NDULUE v IBEZIM & ANOR (2002) SCM 109.*** It is not the function of courts of law, which are also courts of equity, to make a gratuitous award. See ***AFROTEC TECHNICAL SERVICES (NIG) LTD v M. I. A. & SONS LTD & ANOR (2000) 12 SCNJ 298*** and ***NIGERIA AIRFORCE v SHEKETE ONU v AGU (1996) 5 SCNJ 74.*** As stated hereinbefore, the total cheque lodgements/electronic money transfers made by the Plaintiff into the 1st Defendant's account at EcoBank [as evidenced by Exhibits P2A - P2I] amount to ₦6,050,000.00. When this sum is deducted from ₦6,116,666.66 claimed by the Defendants/Counterclaimants as arrears of rent from September 2012 to May 2015, the balance is ₦66,666.66 to which I adjudge them entitled.

The Defendants/Counterclaimants also claimed ₦805,599.16 as "*service charge as at February 2014*"; and ₦878,969.03 as "*service charge (excluding generator usage) from March 2014 to May 2015*" but failed to demonstrate how they arrived at these figures. Having not adduced any evidence showing the amount of service charge payable by the Plaintiff, I find no factual basis upon which to predicate this subhead of the counterclaim. There is also no clear-cut evidence in the form of invoices, receipts, etc. to substantiate the counterclaim for ₦308,600.00 as expenditure allegedly incurred in effecting terminal repairs; even as there is neither legal nor factual basis for the sum of ₦24.5m claimed as anticipated rent upon renovating and letting out the six (6) dwelling units in Plot 63 Parakou Crescent, Wuse II, Abuja "*if the Plaintiff had not frustrated the renovation*". Aside from the fact that the evidence

adduced before me did not reveal anything the Plaintiff did to frustrate the purported renovation, both the alleged terminal repairs said to have been effected by the Defendants and loss of income [in the form of anticipated rentals] represent losses that have crystallised into special damages which must be specifically pleaded and strictly proved. See ***ATTORNEY-GENERAL, OYO v FAIRLAKES HOTEL (No. 2) supra at 286*** and ***J. K. ODUMOSU v AFRICAN CONTINENTAL BANK LTD (1976) 11 SC 53.*** The point has already been made that being exceptional in character, special damages do not follow in ordinary sequence and the law will not make any inference from the nature of the act. See ***BENJAMIN OBASUYI & ANOR v BUSINESS VENTURES LIMITED supra.*** In order to succeed in a claim for cost of repairs, a claimant or counterclaimant must demonstrate by credible evidence that: (i) damage was occasioned by the adverse party; (ii) it was the damaged item that was repaired; (iii) the amount being claimed is the actual cost of replacement; and (iv) the cost itself was reasonable in the circumstances of the case in that a reasonable person would not have done it for less. See ***ZENITH BANK PLC v EKEREUWEM [2012] 4 NWLR (PT. 1290) 207 at 240*** –*per Akeju JCA*. Owing to the unorthodox manner of the Plaintiff's eviction from the demised premises [as I have held], no joint inspection was carried out to ascertain the state of fixtures and fittings at the point of exit and no inventory of alleged damaged items was taken or produced in evidence. Quite clearly therefore, the Defendants/Counterclaimants did not discharge the required evidential burden to sustain these subheads of the counterclaim.

It also does not seem to me that the Defendants succeeded in establishing their entitlement to the award of ₦5m as damages. The point has already been made that the underlying relationship between the Plaintiff and the 1st Defendant is that of landlord and tenant, which is steeped in contract. The

principle upon which the award of damages is predicated in cases of breach of contract is *restitutio in integrum* i.e. restoration of the claimant to the condition he was before the breach occurred. There are two arms of the notion of *restitutio in integrum*: (i) damages that flow naturally from the breach; or (ii) damages within the contemplation of both parties at the time the contract was made. See ***SAVANNAH BANK OF NIGERIA PLC v OLADIPO OPANUBI [2004] 10 MJSC 129 at 149, MANN POOLE & CO. LTD v AGBAJE (1922) 4 NLR 8, TAIWO v PRINCEWILL (1961) 1 ALL NLR 240, MOBIL OIL v AKINFOSILE (1969) 1 NMLR 217*** and ***UNION BEVERAGES LTD v OWOLABI [1988] 1 NWLR (PT. 68) 128.*** It is not damages the court may award at large but it is such that ensures restitution to the claimant for the breach. As it is never the object of the award of damages in cases of breach of contract to give the claimant a windfall or *restitutio in opulentiam,* the burden is always on the claimant to prove the loss resulting from the breach of contract as averred in his pleadings [see ***ALHAJI BALOGUN v ALHAJI LABIRAN [1988] 3 NWLR (PT. 80) 66*** and ***EGBUNIKE v AFRICAN CONTINENTAL BANK LIMITED [1995] 2 NWLR (PT. 375) 34***]; but the Defendants/Counterclaimants did not adduce any credible evidence in proof of any loss suffered as a result of the Plaintiff's occupation of the demised premises for which damages would lie.

There is also no basis for the award of the pre-judgment interest claimed by the Defendants/Counterclaimants. The law, as I have always understood it, is that pre-judgment interest may be awarded only where it is contemplated by the agreement between the parties, or under a mercantile custom or usage, or under a principle of equity such as breach of fiduciary relationship. See ***EKWUNIFE v WAYNE [1989] 5 NWLR (PT. 122) 422 at 455*** *–per Nnaemeka-Agu JSC*, ***M. H. (NIG) LTD v OKEFIENA [2011] 6 NWLR (PT. 1244) 415 at 529-530 (CA), ALFOTRIN v A-G, FEDERATION [1996] 9 NWLR (PT. 475) 634 at***

663, EDEM v CANNON BALL LIMITED [1998] 6 NWLR (PT. 553) 298 at 315 and ***S. A. F. P. & U. v. U.B.A. PLC [2010]17 NWLR (PT. 1221) 19.*** The award of pre-judgment interest in the absence of agreement has been held to constitute an unwarranted interference with the sanctity of contract. See ***A.G. FERRERO & COMPANY LTD v HENKEL CHEMICALS NIGERIA LTD (2011) LPELR-12 (SC)*** *–per F. F. Tabai, JSC*. Pre-judgment interest is not awarded as a matter of course or routine: it is awarded only where the successful party has discharged the onus of strict proof. See ***ABUJA TRANS-NATIONAL MARKET v ABDU [2007] ALL FWLR (PT. 376) 657 at 687-688(CA).*** In the instant case, not only did the Defendants/Counterclaimants fail to adduce any scintilla of evidence in demonstration of the premises upon which their claim for pre-judgment interest at the rate claimed is founded [see ***AZUMI v PAN-AFRICAN BANK LTD [1996] 8 NWLR (PT 467) 462 at 472***], there is also no applicable mercantile custom or usage which this court could take judicial notice of. This subhead of the counterclaim therefore fails without further assurance. See ***HIMMA MERCHANTS LTD v ALIYU [1994] 5 NWLR (PT. 357) 667.***

But different considerations apply to the counterclaim for post-judgment interest, which is a statutory interest payable on judgment debts. By ***Order 39 Rule 4 CPR 218,*** the court may order interest at a rate not less than 10% per annum to be paid on any judgment debt from the date of it or afterwards as the case may be. The beneficiary of statutory interest is neither required to specifically claim statutory interest nor plead the fact or grounds of his entitlement thereto. See ***EKWUNIFE v WAYNE WEST AFRICA LTD supra at 454-455; TEXACO UNLIMITED v PEDMAR LTD [2002] 45 WRN 1 at 45.*** The exercise of the court's discretion to award post-judgment interest arises at the point where it is found that the plaintiff/counterclaimant is entitled to judgment. See ***EBERE v ABIOYE [2005] 41 WRN 172 at 197.***

In the ultimate analysis and for the avoidance of doubt, judgment is entered in the following terms:

1. It will be and is hereby declared that the sealing off of Plot 63 Parakou Crescent, Wuse II, Abuja by welding the main entrance gate and parking of the 1st Defendant's 20-ton truck with Registration No. Abuja XL 429 ABC directly behind the welded gate constitutes forceful ejection of the Plaintiff without recourse to due process of law, which is reprehensible, high-handed and an affront to the rule of law.

2. The Defendants shall pay to the Plaintiff the sum of ₦5,000,000.00 (Five Million Naira) as damages for trespass.

3. The Defendants shall pay to the Plaintiff a further sum of ₦10,000,000.00 (Ten Million Naira) on the footing of exemplary/punitive damages for deploying unorthodox means to evict the Plaintiff from Plot 63 Parakou Crescent, Wuse II, Abuja and the attendant emotional and psychological trauma, depression, pain and anxiety suffered by the Plaintiff by reason thereof.

4. Special damages in the sum of ₦1,880,000.00 (One Million, Eight Hundred and Eighty Thousand Naira) are also awarded against the Defendants in favour of the Plaintiff for expenses incurred in hiring vehicle for daily commuting and other activities from 1/6/15 to 2/9/15.

5. The sums awarded in favour the Plaintiff in (2), (3) and (4) above (which is the judgment sum) shall attract post-judgment interest at the rate of 10% per annum with effect from today until the entire judgment sum is liquidated.

6. The counterclaim succeeds in part and the Plaintiff shall pay to the Defendants/Counterclaimants the sum of ₦66,666.66 being the balance

of outstanding rent for the 3-Bedroom Flat and 1-Room Boys' Quarter occupied by the Plaintiff at No. 63 Parakou Crescent, Wuse II, Abuja from September 2013 to May 2015. This sum shall attract post-judgment interest at the rate of 10% per annum with effect from today until the entire sum is liquidated.

7. The residue of the counterclaim fails and it will be and is hereby dismissed.

8. There shall be no order as to costs.

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PETER O. AFFEN
Honourable Judge

Counsel:

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Ogechi Ogbonna, Esq. (with him: ***Julius Mba, Esq., Albert Akaahs, Esq., Nkem Obiesie, Esq., Folmi Yohanna, Esq.*** and ***Abubakar Useni, Esq.*** and) for the Defendants.