

**IN THE HIGH COURT OF THE FEDERAL  
CAPITAL TERRITORY, ABUJA  
HOLDEN AT ABUJA**

**ON TUESDAY, 30<sup>TH</sup> DAY OF APRIL, 2019**

**BEFORE HON. JUSTICE SYLVANUS C. ORIJI**

**SUIT NO. FCT/HC/CV/2474/2016**

**BETWEEN**

**MURG PROPERTIES LTD.**

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**PLAINTIFF**

**AND**

**RESORT SAVINGS & LOANS PLC.**

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**DEFENDANTS**

**JUDGMENT**

In paragraph 11 of the statement of claim filed on 2/9/2016 along with the writ of summons, the plaintiff claims these reliefs against the defendant:

- a) An order of the Honourable Court compelling the defendant to deliver to the plaintiff forthwith, immediate vacant possession of the aforesaid Banking Hall [comprising the ground, first and second floors] and attached appurtenances situate and located at Block B of the said MURG SHOPPING MALL, No. 5, Awka Street, Opp UTC Shopping Complex, Area 10, Garki, Abuja, FCT, being the plaintiff's premises now being held over by the defendant against the plaintiff's consent.

- b) N8,750,000.00 being arrears of rent for seven [7] months from 1<sup>st</sup> October, 2015 until 21<sup>st</sup> April, 2016, at the prorated monthly sum of N1,250,000.00, being the same amount previously paid as rent per annum by the defendant in respect of the Banking Hall and attached appurtenances.
- c) N320,833.00 being arrears of service charge for eleven [11] months from 1<sup>st</sup> October, 2015 to 31<sup>st</sup> August, 2016 at the prorated monthly sum of N29,166.66, being the same amount previously paid as service charge by the defendant per annum in respect of the Banking Hall and attached appurtenances.
- d) *Mesne* profit for the use and occupation by the defendant of the plaintiff's aforesaid Banking Hall with attached appurtenances at the rate of N1,250,000.00 monthly, from 5<sup>th</sup> May, 2016 until judgment and thereafter at the rate of N1,500,000.00 monthly till possession is delivered to the plaintiff.
- e) An order of the Honourable Court compelling the defendant to restore the said demised premises to the original state or condition it was before the commencement of the defendant's tenancy and make same habitable.
- f) N500,000.00 cost of this suit.

Alhaji Ibrahim Abdullahi, the plaintiff's general manager, testified as PW1. The evidence in-chief of PW1 is contained in his statement on oath filed on 2/9/2016, which he adopted on 27/2/2017. He tendered Exhibits A, B, C, C1, D, E1-E7, F, G1-G3 & H1-H3. The defendant did not adduce any evidence.

The evidence of PW1 is that the plaintiff is the owner of the shops comprised in the Shopping Plaza known as Murg Shopping Mall, located at No. 5, Awka Street, near UTC Shopping Complex, Area 10, Garki, Abuja. The defendant is a yearly tenant of the plaintiff at Block B of Murg Plaza, where it occupied the Banking Hall apartment [comprising the ground, first and second floors]. The defendant's tenancy was first created by a tenancy agreement dated 28/1/2009???[Exhibit B]. The defendant initially paid rent in advance for two years commencing from 1/10/2009 to 1/10/2011. Following the expiration of the defendant's tenancy in 2011, it continued to renew the tenancy on a yearly basis by payment of the sum of N15,000,000.00 as rent for one year term exclusive of service charges of N350,000.00 per annum from 1<sup>st</sup> October to 1<sup>st</sup> October for 2011-2012, 2012-2013, 2013-2014 and 2014-2015. The plaintiff's receipt dated 8/1/2014 for N15 million being rent for 1/10/2013 to 1/10/2014 issued to the defendant is Exhibit F.

The last rent received from the defendant was the sum of N15,000,000.00 for the tenancy period from 1/10/2014 to 1/10/2015. The defendant defaulted in paying the rent for 2015-2016 tenancy year. As a result of the failure of the defendant to renew its tenancy for the 2015-2016 term, the plaintiff caused

several demand letters to be written to the defendant for the payment of the rent to no avail. Letters from the plaintiff's solicitors [Iloegbunam Umahi & Co.] dated 7/10/2015, 5/2/2016 and 21/4/2016 are respectively Exhibits G1, G2 & G3. The defendant's replies addressed to Iloegbunam Umahi & Co. dated 14/10/2015, 11/2/2016 and 28/4/2016 are respectively Exhibits H1, H2 & H3.

Alhaji Ibrahim Abdullahi [PW1] further stated that the defendant continued to break its several promises to pay its rent. The plaintiff terminated the tenancy relationship with the defendant and served the defendant a notice of owner's intention to apply to court to recover possession of the demised premises. In spite of the said notice, the defendant refused or neglected to deliver possession of the premises. During cross examination, PW1 stated that the defendant moved out of the premises sometime in 2017; but he did not know the exact date.

After the cross examination of PW1 on 21/1/2019, learned counsel for the defendant, Ugwuanyi Chukwuemeka Esq., told the Court that the defendant did not intend to call any witness. On 8/3/2019, F. I. Umahi Esq. adopted the plaintiff's final address which he filed on 6/6/2017; while Mr. Ugwuanyi Chukwuemeka adopted the defendant's final address filed on 19/2/2019.

In the plaintiff's final address, F. I. Umahi Esq. formulated two issues for the Court's determination, which were adopted by Ugwuanyi Chukwuemeka Esq. in the defendant's final address. The issues are:

1. Whether having regard to the provisions of the written Tenancy Agreement between the parties especially with regard to clause 4 thereto, the plaintiff was right to terminate its tenancy agreement with the defendant upon giving the defendant two [2] months' Notice thereto.
2. Whether having regard to the pleadings and evidence before the Court, and the entire circumstances of this case, the plaintiff has discharged the burden of proof on it to be entitled to the reliefs claimed in the suit.

As I said earlier, the defendant did not adduce any evidence at the trial. Mr. F. I. Umahi is correct that the evidence of the plaintiff is unchallenged. It is trite law that where the evidence before the Court is neither challenged nor contradicted by the other party who had the opportunity to do so, the Court would be right and justified to rely on such evidence in arriving at its decision. See the case of **Petroleum [Special] Trust Fund v. Integrated Facility Management Service Ltd. [2002] 16 NWLR [Pt. 794] 586.**

However, the acceptance of unchallenged evidence by the court on the one hand and the sufficiency of that evidence in establishing the claims of the plaintiff on the other are different matters. Even where the defendant failed to defend the action, as in the instant case, it does not follow that judgment must be entered for the plaintiff for his claims. See the case of **NEPA v. Chief Etim Inameti [2002] 11 NWLR [Pt. 778] 397.** Therefore, the issue for determination is whether the plaintiff is entitled to its reliefs.

In relief [a], the plaintiff claims immediate vacant possession of Banking Hall [comprising the ground, first and second floors] located at Block B, Murg Shopping Mall, No. 5 Awka Street, Area 10, Garki, Abuja. In relief [e], the plaintiff seeks an order of the Court compelling the defendant to restore the demised premises to the original state or condition. Both counsel canvassed arguments on relief [a]; especially on the validity or otherwise of the quit notice served on the defendant by plaintiff. In the course of adopting the plaintiff's final address, Mr. F. I. Umahi applied to withdraw reliefs [a] & [e]. He stated that the defendant delivered vacant possession of the premises in June 2018. Reliefs [a] & [e] are struck out.

In relief [b], the plaintiff claims N8,750,000.00 as arrears of rent for 7 months from 1/10/2015 to 21/4/2016. The claim in relief [d] is *mesne* profit at the rate of N1,250,000.00 monthly from 5/5/2016 until judgment and thereafter at the rate of N1,500,000.00 monthly till possession is delivered to the plaintiff. The view of the plaintiff's counsel is that the plaintiff has proved its case since its evidence is unchallenged.

For his part, the defence counsel referred to sections 37 & 38 of the Evidence Act, 2011 on hearsay evidence and submitted that:

*“ ... it is the maker of an oral or written statement contained in a document that can tender it ... My Lord will recall that it was admitted by PW1 under cross examination on record that Exhibits H, J, L, M and O were tendered by him PW1 who was not the maker of the documents as required by sections 37*

*and 38 of the Evidence Act above but his lawyer did and it is the law that evidence wrongly admitted goes to no issue.*

*We respectfully submit that though the defendant did not file statement of defence or lead any evidence but relied on the claimant's case had been able by this address [to] challenge the case of the claimant and based on that pray this Honourable Court to dismiss this suit for lacking in merit."*

Let me remark that the PW1 did not tender Exhibits J, K, M and O; he only tendered Exhibits A-H. Exhibits H1, H2 & H3 are the defendant's letters to the plaintiff's solicitors [Iloegbunam Umahi & Co.]. The letters written to the defendant by Iloegbunam Umahi & Co. are Exhibits G1, G2, G3. The said documents tendered by the PW1 are in respect of the tenancy relationship between the plaintiff and the defendant.

In **Saleh v. Bank of the North Ltd. [2006] 6 NWLR [Pt. 976] 316**, the Supreme Court held that a company is a juristic person and can only act through its agents or servants. Consequently, any agent or servant can give evidence to establish any transaction entered into by a juristic personality. Even where the official giving the evidence is not the one who actually took part in the transaction on behalf of the company, such evidence is nonetheless relevant and admissible and will not be discountenanced or rejected as hearsay evidence. In the light of this principle, I hold that the PW1, as the plaintiff's general manager, can tender letters written by the plaintiff's solicitors and the

letters written to the plaintiff's solicitors in respect of the tenancy relationship between the plaintiff and the defendant. The evidence of the PW1 and the documents he tendered are not hearsay evidence.

Now, the plaintiff's unchallenged evidence is that the last rent paid by the defendant was for the period 1/10/2014 to 1/10/2015. Arrears of rent refer to the rent unpaid by a tenant before the end of the tenancy. The expression "*mesne profit*" is used to describe the sum due and payable to a landlord from the time his tenant ceases to hold the premises as tenant to the time the tenant gives up possession of the premises. See the case of **Odutola v. Papersack [Nig.] Ltd. [2006] 18 NWLR [Pt. 1012] 470.**

Since defendant is not disputing that it has not paid its rent to the plaintiff from 1/10/2015, I hold that the plaintiff is entitled to the reliefs for arrears of rent and *mesne profit* as claimed in reliefs [b] & [d]. It is the law that if a tenant is still in possession of the premises and the award of *mesne profit* is upheld, the *mesne profit* will be calculated up to the date the tenant gives up possession. See **Agbamu v. Ofili [2004] 5 NWLR [Pt. 867] 540.**

In the course of adopting the plaintiff's final address, Mr. Umahi stated that the plaintiff's claim is for two years' rent at N15 million per year from 1/10/2015 to 1/10/2017. He further stated that even though the defendant overstayed in the premises from 1/10/2017 till June 2018 when it delivered possession, the plaintiff is waiving the rent payable for that period. I pause to



remark that as at 27/2/2017 when the PW1 gave evidence, the defendant was still in possession of the demised premises. The evidence of the PW1 during cross examination is that the defendant moved out of the premises sometime in 2017. This evidence does not defeat the plaintiff's claim for *mesne* profit up to 1/10/2017. Thus, reliefs [b] & [d] are granted.

In relief [c], the plaintiff claims N320,833.00 being arrears of service charge for eleven [11] months from 1/10/2015 to 31/8/2016 calculated at a monthly rate of N29,166.66. In paragraph 7 of the statement on oath of PW1 - which is in line with the averment in paragraph 5 of the statement of claim - he stated that the defendant paid N15 million as rent for one year term "*exclusive of service charges of N350,000.00 [...] per annum*" from 1<sup>st</sup> October to 1<sup>st</sup> October in each year of 2011-2012, 2012-2013, 2013-2014 and 2014-2015; until the defendant started defaulting in payment for the 2015-2016 tenancy year. This evidence is unchallenged. The relief is granted.

In conclusion, I enter judgment for the plaintiff against the defendant as follows:

- a) N8,750,000.00 being arrears of rent for seven [7] months from 1/10/2015 to 21/4/2016 at the prorated monthly sum of N1,250,000.00, being the same amount previously paid as rent per annum by the defendant in respect of the Banking Hall and attached appurtenances.

- b) N320,833.00 being arrears of service charge for eleven [11] months from 1/10/2015 to 31/8/2016 at the prorated monthly sum of N29,166.66, being the same amount previously paid as service charge by the defendant per annum in respect of the Banking Hall and attached appurtenances.
- c) *Mesne* profit at the rate of N1,250,000.00 monthly from 5/5/2016 to 1/10/2017.
- d) Cost of N100,000.00.

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HON. JUSTICE S. C. ORIJI  
[JUDGE]

*Appearance of counsel:*

F. I. Umahi Esq. for the claimant.