



3. N592,000.00 being service charge payable on the said premises from 1<sup>st</sup> November 2014 - 31<sup>st</sup> October 2015.
4. *Mesne* profits at the rate of N222,000.00 per month being the rate of the rent [N2,072,000.00 per annum] and service charge [N592,000.00 per annum] of the said premises, from 1<sup>st</sup> November 2015 until judgment and thereafter until possession is given up.
5. The sum of N1,000,000.00 being general and exemplary damages for breach of contract.
6. Cost of this action.

At the trial, Innocent Kanu, plaintiff's manager at Asokoro Shopping Mall, testified as PW1. He adopted his statement on oath filed on 18/1/2017 and tendered Exhibits A, B, C, D1, D2, E & F. The defendant did not file any process and did not attend Court throughout the proceedings.

The evidence of PW1 is that the plaintiff is the owner of Asokoro Shopping Mall, situate at Plot 1552 T. Y. Danjuma Street, Asokoro, FCT, Abuja. The defendant is the plaintiff's tenant with respect to Shop 6 [measuring 148 m<sup>2</sup>] on the Ground Floor of the said Asokoro Shopping Mall, Abuja by virtue of a tenancy agreement for a term certain from 1/11/2013 to 31/10/2015. The defendant's tenancy at the said Mall ran from 1<sup>st</sup> November to 31<sup>st</sup> October of the following year at a rent of N14,000.00 per square meter per annum and service charge of N4,000.00 per square meter per annum. The defendant paid

the sum of N2,072,000.00 at the commencement of its tenancy to cover rent for one year from 1/11/2013 to 31/10/2014. The defendant also paid service charge for one year in the sum of N597,000.00 as well as legal and agency fees of N828,800.00; all payments amounted to N3,497,800.00.

The parties agreed that the defendant shall pay the rent for the second year of the term granted [i.e. 1/11/2014 to 31/10/2015], being the sum of N2,072,000.00 on or before 31/7/2014 as contained in clauses 2[a] & [b] and 3[e] of the said tenancy agreement dated 19/9/2013. The defendant failed or neglected to pay the rent [i.e. N2,072,000.00] and service charge [i.e. N592,000.00] for the second year of the term granted despite repeated demands and appeals. Upon the expiration of the defendant's tenancy by effluxion of time at the end of the term certain granted on 31/10/2015, the defendant did not deliver up possession of the premises and is still holding-over the premises and owing the plaintiff for use and occupation of the premise to date. Plaintiff has through letters, telephone calls and personal visits by its agents appealed to the defendant to pay the outstanding amounts and deliver up possession; but the defendant refused and/or neglected to do so.

PW1 further stated that the plaintiff desires the premises occupied by the defendant for personal use. He served Notice to Tenant of Owners Intention to Apply to Recover Possession dated 20/6/2016 on the defendant by pasting same at the main entrance door of the said premises; he took a photograph of it as the defendant refused personal service of the notice. The defendant has

breached its contract with the plaintiff. The plaintiff has suffered financial loss, hardship, business setback and loss of investment opportunities following the defendant's breach of contract and refusal to pay rent and other monies due to the plaintiff from year 2014 to date; and at the same time refusing to deliver up possession of the premises.

The PW1 tendered the following documents:

- i. Tenancy Agreement between the parties dated 19/9/2013 is Exhibit A.
- ii. Receipt dated 26/8/2013 is Exhibit B.
- iii. Offer letter dated 23/5/2013 is Exhibit C.
- iv. Letters from M & G Chambers dated 7/5/2015 and 21/6/2016 are Exhibits D1 & D2 respectively.
- v. Notice to tenant of owner's intention to apply to recover possession dated 20/6/2016 is Exhibit E.
- vi. Photograph is Exhibit F.

At the end of trial, P. Ike Okocha Esq. filed the plaintiff's final address on 28/1/2019, which was served on the defendant on 29/1/2019. The defendant did not file its final address. On 25/2/2019, Mr. Okocha adopted the plaintiff's final address.

The four issues formulated for determination by the plaintiff's counsel are:

1. Whether the claimant is entitled to possession of the premises in issue in this suit.
2. Whether the claimant has made out a case to entitle it to arrears of rent and service charge in the sum of N2,664,000.00.
3. Whether the claimant is entitled to *mesne* profits as claimed.
4. Whether the claimant is entitled to damages as claimed.

As I said before, the defendant did not adduce any evidence at the trial. As rightly stated by learned plaintiff's counsel, it is trite law that where 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 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 **NEPA v. Chief EtimInameti [2002] 11 NWLR [Pt. 778] 397.** Therefore, the issue for determination is whether the plaintiff is entitled to its reliefs. The reliefs will be considered in turn.

**Relief 1 - Claim for Possession:**

Learned counsel for the plaintiff posited that to succeed in a claim for possession of premises in a tenancy for a term certain, quit notice is not required because the tenancy would have determined by effluxion of time. Upon expiration of the term, the plaintiff is required to serve the defendant with the notice of owner's intention to apply to court to recover possession. He relied on section 7 of Recovery of Premises Act, Laws of the Federation of Nigeria [Abuja], Cap. 544, 1990; and the case of **Chemiron Int'l Ltd. v. Stabilini Visinoni Ltd. [2018] 17 NWLR [Pt. 1647] 62.** He referred to the evidence of PW1 and submitted that plaintiff has satisfied the requirement of the law to be entitled to the claim for possession of the said premises.

In **Iheanacho v. Uzochukwu [1997] 2 NWLR [Pt. 487] 257,** it was held that a landlord desiring to recover possession of premises let to his tenant shall firstly, unless the tenancy has already expired, determine the tenancy by service on the tenant [or defendant] of an appropriate notice to quit. On the determination of the tenancy, he shall serve the tenant with the statutory 7 days' notice of his intention to apply to court to recover possession of the premises. Thereafter, the landlord shall file his action in court. See also **Samuel Iwuagolu v. Mr. Chizea Pascal Azyka [2007] 5 NWLR [Pt. 1028] 613.**

In the instant case, the tenancy agreement dated 19/9/2013 [Exhibit A] created a tenancy for "*a term of two [2] years CERTAIN commencing from the 1<sup>st</sup> day of November, 2013 to the 31<sup>st</sup> day of October, 2015 ...*" Mr. Okocha is correct that

the tenancy automatically expired by effluxion of time on 31/10/2015. Thus, the defendant was only entitled to be served the notice of owner's intention to apply to Court to recover possession. The unchallenged evidence of PW1 is that the said notice dated 20/6/2016 [Exhibit E] was served on the defendant by pasting as evidenced by the photograph, Exhibit F. I hold that the plaintiff is entitled to possession of Shop 6 on the Ground Floor of Asokoro Shopping Mall, Plot 1552 T. Y. Danjuma Street, Asokoro, FCT, Abuja.

**Reliefs 2 & 3 - Claim for Arrears of Rent; and Arrears of Service Charge:**

The claim for arrears of rent of N2,072,000.00 is from 1/11/2014 to 31/10/2015. The claim for arrears of service charge of N592,000.00 is also from 1/11/2014 to 31/10/2015. The plaintiff's counsel submitted that the plaintiff has proved these claims. The evidence of the plaintiff is that at the commencement of its tenancy in the premises, the defendant paid the rent and service charge for one year from 1/11/2013 to 31/10/2014. The defendant failed or neglected to pay the rent [i.e. N2,072,000.00] and service charge [i.e. N592,000.00] for the second year of the term granted despite repeated demands and appeals. In the light of this unchallenged evidence, relief 2 for arrears of rent and relief 3 for arrears of service charge from 1/11/2014 to 31/10/2015 are granted.

**Relief 4 - Claim for Mesne Profits:**

Under Issue No. 3 formulated by Mr. Okocha, he submitted that the plaintiff has proved its claim for *mesne* profits in the light of the evidence of PW1 that

the defendant is still in possession of the premises after the determination of its tenancy on 31/10/2015. In the case of Odutola v. Papersack [Nig.] Ltd. [2006] 18 NWLR [Pt. 1012] 470, it was held that the expression “*mesne profits*” 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 also Faloughi v. First Impression Cleaners Ltd. [2014] 7 NWLR [Pt. 1406] 335. In the instant case, the defendant’s tenancy ended - or was determined by effluxion of time - on 31/10/2015.

The unchallenged evidence of PW1 is that the defendant is still holding-over the premises. It is the law that if a tenant is still in possession of the premises and the award of *mesne profits* is upheld, the *mesne profits* will be calculated up to the date he gives up possession. See the case of Agbamu v. Ofili [2004] 5 NWLR [Pt. 867] 540. The Court grants relief 4 for *mesne profits* at the rate of N222,000.00 per month.

**Relief 5 - Claim for General and Exemplary Damages:**

Learned plaintiff’s counsel cited the case of Nigeria Bank for Commerce and Industry v. Dauphin Nigeria Ltd. [2014] 16 NWLR [Pt. 1432] 90 to support the principle that the law presumes general damages to be the direct, natural or probable consequence of the action complained of. General damages need not be specifically pleaded or proved; it arises by inference of law. Mr. Okochasubmitted that in the instant case, the plaintiff has established that the



defendant's refusal to pay arrears of rent and service charge amounting to N2,664,000.00 from 1/11/2014 to 31/10/2015 and its failure to surrender possession of the premises amount to breach of contract, loss of income and denial of enjoyment of the fruit of the plaintiff's investment on the premises. Mr. Okocha urged the Court to grant plaintiff's claim for general damages.

In respect of the claim for exemplary damages, Mr. Okocha referred to the case of **Federal Capital Development Authority v. Unique Future Leaders International Ltd. [2014] 17 NWLR [Pt. 1436] 213** where it was held that it is not sufficient to show that the defendant has committed the wrongful act complained of; the defendant's conduct must be high handed, outrageous, insolent, vindictive, oppressive, malicious and showing contempt of the claimant's right. Learned counsel submitted that in this case, the defendant's conduct is manifestly high handed, outrageous, insolent, vindictive, oppressive, malicious and showing contempt to the plaintiff's right to enjoyment of the fruit of its investment. He urged the Court to award exemplary damages to the plaintiff.

Mr. Okocha correctly stated the principles guiding the award of general and exemplary damages. It is worthy of note that an award of general damages or exemplary damages is discretionary; each case must be decided on its own peculiar facts. In the instant case, can the Court award the plaintiff's claims for general damages and exemplary damages, having awarded the claims for arrears of rent and *mesne* profits, which are claims for special damages?

In the case of Savannah Sugar Co. Ltd. v. Wabbey Farms Ltd. [2013] LPELR-22129 [CA], the court held that in a claim for damages for breach of contract, the Court is concerned only with damages which are the natural and probable consequences of the breach or damage within the contemplation of the parties at the time of the contract. However, in such a claim, the court must be careful not to compensate a party twice for the same wrong. By the law against double compensation, a party who has been fully compensated under one head of damages for a particular injury cannot be awarded damages in respect of the same injury under another head.

Also in C.F.A.O. Nig. Plc. v. I. K. John Int'l Ltd. [2016] LPELR-4201 [CA], it was restated that it is not the law that general damages if claimed must be awarded once special damages are proved. If anything, the law expects courts to be vigilant in awarding general damages once special damages have been awarded, so as to avoid double compensation. See also ZanenVerstoep & Co. [Nig.] Ltd. Four Star Ind. Ltd. [2016] LPELR-41258 [CA]. I hold that since the plaintiff has been awarded various sums of money as arrears of rent and *mesne* profits, the award of any sum under the head of general or exemplary damages will amount to double compensation. Relief 5 is refused.

In conclusion, the Court enters judgment for the plaintiff against defendant as follows:

1. Possession of premises being office apartment and appurtenances known as Shop 6 and measuring 148m<sup>2</sup>, on the Ground Floor of

Asokoro Shopping Mall, situate at Plot 1552 T. Y. Danjuma Street, Asokoro, Abuja.

2. N2,072,000.00 being arrears of rent accrued on the defendant's tenancy at the plaintiff's premises above from 1/11/2014 to 31/10/2015.
3. N592,000.00 being service charge payable on the said premises from 1/11/2014 to 31/10/2015.
4. *Mesne* profits at the rate of N222,000.00 per month being the rate of the rent [i.e. N2,072,000.00 per annum] and service charge [i.e. N592,000.00 per annum] of the said premises from 1/11/2015 until possession is given up.
5. Cost of N100,000.00.

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HON. JUSTICE S. C. ORIJI  
[JUDGE]

*Appearance of counsel:*

No counsel.