

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 30, NYANYA, ABUJA

SUIT NO: FCT/HC/CV/2746/16

BEFORE HIS LORDSHIP:

HON. JUSTICE MUAWIYAH BABA IDRIS

CLERK OF THE COURT: O. TOBI BLESSING

BETWEEN

FILMOREALITY LIMITED PLAINTIFF

AND

AG GOLD TRUST LIMITED DEFENDANT

JUDGMENT

By an amended statement of claim, the claimant prays for the following:

1. A Declaration that the failure of the Defendant to pay its rent is a fundamental breach of Tenancy Agreement executed with the plaintiff which enable s the Plaintiff to determine the Defendant's tenancy.
2. A Declaration that the Defendant's tenancy was validly determined by the Seven day's Notice of Owner's intention to Recover Possession issued as per the terms of the Tenancy Agreement.
3. An Order of Court directing the Defendant to vacate and deliver vacant possession of House 2, Plot 843 Zone B04, Jabi District, Abuja the subject matter of this suit to the Plaintiff.
4. An order of Court compelling the Defendant to pay the sum of \$25,000.00 (Twenty-Five Thousand Dollars) to the Plaintiff being its balance of rent owed for the March 1, 2015 to February 28, 2016 tenancy.
5. An order of Court compelling the Defendant to pay the sum of N3,750,000.00 (Three Million Seven Hundred and Fifty Thousand Naira Only) to the Plaintiff as prorated rent for the period of March 1, 2016 to July 31, 2016.

6. An order of Court compelling the Defendant to pay the sum of N750,000.00 per month as mesne profit on the property from August 1, 2016 till the determination of this suit.
7. An Order of Court directing the Defendant to pay the sum of N750,000.00 as mesne profit on the suit from the date of judgment till the date vacant possession is eventually handed over to the Plaintiff.
8. An Order of Court compelling the Defendant to pay the Plaintiff the sum of N4,500,000.00 (Four Million Five Hundred Naira Only) being its service Charge for Three years at N1,500,000.00 per year for the March 1, 2015 to February 28, 2016, March 1, 2017 to February 28, 2017 and finally the March 1, 2017 to February 28, 2018 service years.
9. An order of Court compelling the Defendant to pay the Plaintiff its outstanding diesel deposit of N1,917,966.67 (One Million Nine Hundred and Seventeen Thousand, Nine Hundred and Sixty-Six Naira, Sixty-Seven Kobo) as its diesel charge from the 2nd quarter of 2016 to the 2nd quarter of 2017.
10. The sum of N10,000,000 (Ten Million Naira Only) as general damages for breach of the agreement.
11. The sum of N2,000,000 (Two Million Naira Only) as cost of this suit.
12. Interest on the entire judgment sum at 15% per annum from the date of judgment till same is liquidated.

It is the pleadings of the Claimant that:

2. in the usual course of the Plaintiff's business it was appointed by Mrs. Maryam Uwais to manage her property at House 2, Plot 843, Zone B04, Jabi District, Abuja after the property was newly completed.
3. The Defendant is Mrs. Maryam Uwais's yearly tenant of the property at House 2, Plot 843, Zone B04, Jabi District, Abuja under the control and management of the Plaintiff.
4. The Defendant entered the property under a yearly tenancy commencing on the 1st of March and terminating on the 28th of February.
5. From March 1, 2014 to February 28, 2016 the annual rent of the Defendant was \$45,000.00 (Forty-Five Thousand Dollars only)

6. At the expiration of its tenancy on 28th February 2015, the Plaintiff wrote to the Defendant requesting for the payment for the new 1st March 2015 to 28th February, 2016 tenancy. The said letter dated March 9, 2015 is hereby pleaded and will be relied upon during the trial of this suit.
7. The Defendant wrote back to the Plaintiff promising to pay his rent by the 31st of May 2015. The said letter dated March 26, 2015 is hereby pleaded and will be relied upon during trial.
8. The Plaintiff wrote to the Defendant conceding to its request on the condition that it made on immediate 50% deposit payment with the balance to be paid by the proposed May 31, 2015.
9. The Defendant insisted that it would make full payment of the entire rent on the 31st of May, 2015 as it would only be in the position to make payment on that day. It also promised to make payment of its service charge of N1,500,000.00 (One Million Five Hundred Thousand Naira only) for the period of 1st March 2015 to 28th February, 2016.
10. The Plaintiff thereafter requested the Defendant to vacate and hand over possession of the Property and also make payment for the time spent in the property after the expiration of tenancy.
11. The Defendant forwarded two postdated cheques to the Plaintiff to cover payment for its two years rent from March 1, 2015 to February 28, 2017. The two cheques dated July 15, 2015 and July 31, 2015 are hereby pleaded and will be relied upon during trial.
12. Before the due date for presentation of the cheques, the Defendant's representative requested that the Plaintiff disregard the cheques and not present them as they would not be give value. Defendant thereafter made part payment of its rent by making a combined payment of \$20,000.00 leaving a balance of \$25,000.00 for its March 1, 2015 to February 28, 2016 tenancy which it promised to pay by August 2015.
13. The landlady (Mrs. Maryam Uwais) and Defendant thereafter executed a new Tenancy Agreement between them with substantially the same terms and conditions as the previous one which was unexecuted.
14. By the end of August 2015 the Defendant had not made any further payment to defray the balance of rent prompting a series of oral and

written request for payment of the rent/hand-over of possession of the property by the Plaintiff and several oral and failed promises to pay the rent by the Defendant.

15. At the End of the March 1 2015 to February 28 (29) 2016 tenancy the Defendant was owing the balance of \$25,000 (Twenty-Five Thousand Dollars) on its rent as well as service charge deposit of N1,500,000.00 and diesel deposit which is separately charged for the fueling of the communal generator.
16. The service charge for the Defendant is N1,500,000.00 per annum while the Diesel Deposit is separately assessed for the cost of fueling the communal generator and is payable quarterly.
17. In a bid to encourage the Defendant who despite not paying its rent kept on making several promises and assurances to pay, the Plaintiff agreed to let it pay for its March 1, 2016 to February 28, 2017 tenancy in Naira by paying the sum of N9,000,000.00 (Nine Million Naira) only as annual rent.
18. The main reason the Plaintiff kept on acceding to the Defendant's request was its assurance that it was owed huge amount from the Delta State Government and had just been awarded a concession contract from which it expected payment soonest.
19. By the time the Plaintiff realized it was being led on a merry dance the Defendant had already commenced a new tenancy without fully paying for the expired one and not paying its service charge and diesel deposit which at June 7, 2016 stood at N3,333,886.67.
20. The Plaintiff was constrained to brief its solicitors Messre Wali-Uwais & Co to recover the total amount due from the Defendant as well as possession of the property due to its constant failure to pay the demanded sums owed.
21. The Plaintiff's Solicitors as per the terms of the Tenancy Agreement gave the Defendant a Seven Day's Notice of Owners intention to Recover Possession of the property. The said notice dated August 2, 2016 is hereby pleaded and will be relied upon during trial.
22. The plaintiff's Solicitors also wrote a letter of Demand for the total sum owed by the Defendant comprising of the balance of the March 1, 2015

to February 28, 2016 tenancy which amounted to \$25,000, prorated rent on the property for the period of March 1, 2016 to July 31, 2016 which amounted to N3,750,000.00 (Three Million, Seven Hundred and Fifty Thousand Naira only) Service charge of N1,500,000.00 for the period of March 1, 2015 to February 28, 2016, service charge of N625,000 (Six Hundred and finally the outstanding diesel deposit for the 2nd and 3rd quarter of 2016 to July 31, 2016 which amounted to N960,529.17 (Nine Hundred and Sixty Thousand, Five Hundred and Twenty Nine Naira Seventeen kobo only). The Letter dated August 2, 2016 is hereby pleaded and will be relied upon during trial.

23. Due to a break-down in communication between the Plaintiff and its Solicitor's the amount demand for as balance for the March 1, 2015 tenancy to February 28, 2016 tenancy was \$2,500 (Two Thousand Five Hundred Dollars only) instead of the correct sum of \$ 25,000.00.
24. When the Plaintiff's Solicitor's discovered the error, they wrote another letter captioned "Final Demand Notice" clarifying the mistake and requesting the actual due amount as balance of the March 1, 2015 to February 28, 2016 tenancy of \$25,000.00 as well as the other outstanding sums. The said Final demand Notice dated August 10, 2016 is hereby pleaded and will be relied upon during trial.
25. The Defendant caused its Solicitors to respond with the same old promises to pay the outstanding sums due based on the assurances that it had huge amounts owed it by the Delta State Government and had just been awarded a concession contract the proceeds of which it hoped to liquidate the sum due. The said letter dated 17th day of August, 2015 (SIC) received on August 19, 2016 is hereby pleaded and will be relied upon during trial.
26. The Plaintiff was constrained to reject the offer as it had formed the basis for a series of failed promises over the years and instructed its Solicitors to write back informing the Defendant of its decision and expectation for the Defendant to vacate the premises as well as liquidate the entire amount owed by it. The said letter written by the Plaintiff's Solicitors dated August 30, 2016 is hereby pleaded and will be relied upon during trial.

Evidence lead by PW 1, ERINMA POLYCARP ABARA the sole witness of the Claimant is in line with the averments in the statement Claim.

PW 1 tendered the following documents in evidence:

- Exh. P1: Claimant's letter dated 9/3/15.
- Exh. P2: Defendant's letter date 26/3/15.
- Exh. P3: Claimant's letter dated 27/3/15.
- Exh. P4: Defendant's Letter dated 2/4/15.
- Exh. P5: Defendant's Letter dated 25/5/15.
- Exh. P6: Claimant's Letter dated 28/7/15.
- Exh. P7: Defendant's Letter dated 23/11/15.
- Exh. P8: Claimant's Letter dated 9/2/16.
- Exh. P9: Claimant's Letter dated 1/6/16.
- Exh. P10: Claimant's Solicitor's Letter dated.
- Exh. P11: Notice of Owner's intention to recover possession dated 2/8/16.
- Exh. P12: Claimant's Letter dated 16/5/16.
- Exh. P13: Claimant's Solicitor's Letter dated 10/8/16.
- Exh. P14: Defendant's Solicitor's letter dated received on 19/8/16.
- Exh. P15: Claimant's Solicitor's Letter dated 30/8/16.
- Exh. P16: Defendant's Solicitor's Letter dated 20/5/16.
- Exh. P17: Power of Attorney donated to the Claimant by Mrs. Maryam Uwais

PW 1 was cross-examined by the defendant's counsel.

Under cross-examination PW 1 told the Court that Mrs. Maryam Uwais is not a party to this suit and the suit is not filed on behalf of Mrs. Uwais. That the Claimant has power to manage the property. That there is no indication that the matter was commenced by the Claimant as the Attorney of Mrs. Uwais.

The defendant did not file statement of defence to this action.

Parties filed their respective final written addresses.

The sole issue raised by the learned counsel for the Claimant is:

Whether the Plaintiff is entitled to the reliefs prayed this Honourable Court.

The Defendant's learned counsel raised two issues for determination as follows:

1. Whether the Plaintiff not being a party to the contract between the defendant and Mrs. Maryam Uwais has the locus standi to institute this action.
2. Whether Court and the parties can make use of rejected document rejected by the court in evidence.

The Claimant's learned counsel filed a reply on point of law.

I have read the arguments of the learned counsel in their respective written addresses and may refer to their submission.

In his argument on the sole issue raised, learned counsel for the Claimant submitted that cause of action is the foundation of every civil action. He submitted that by the Power of Attorney (Exh. P17) the Claimant has the locus to institute and maintain action in Court against a tenant to recover arrears of rent.

It is further argued the S.2 of the Recovery of Premises law defined a landlord to include the Attorney or agent of the landlord and any person appointed to act on his behalf.

Learned counsel for the defendant in arguing issue 1 raised in the defendant's final written address submitted that the Plaintiff has no locus standi to institute the action in its personal capacity because it is not the owner of the property and also not party to the contract of tenancy agreement between Mrs. Maryam Uwais and the defendant. He further submitted that the Claimant can only institute the action as the Attorney of Mrs. Uwais.

He cited the cases of **ARANUIOLA vs. ANIMASHAUN (1974) 12 CCHJ 1869** and **BAYEJOH vs. ALONGE (1976)3 OYSHC**.

Learned counsel for the Claimant in his reply argued that the cases ARANUIOLA and BAYEJOH cited by the defendant's counsel were decided before the enactment of Recovery of Premises Act.

It should be noted the instrument that gave the Claimant the legal backing to manage and institute action in respect of the property is the power of Attorney (Exh. 17).

Now can the donee of a Power of Attorney, in this case the Claimant sue in its own name. This has been answer by Iguh JSC in the case of **VULCAN GASES LTD. Vs. GASELSCHAFT FUR. INDUSTRIES A Co (2001) 9 NWLR (PT. 719) 610** where the Noble Lord of the Supreme Court held:

“..... The donee of a Power of Attorney or an agent in the presentation of a Court suit or action pursuant to the power must sue in the name of the donor or his principal and not otherwise.”

Also in the case of C.N. EKWUOGOR INVESTMENT (NIG.) LTD vs. ASCO INVESTMENT LTD (2011) LPELR-3899 (CA) OKORO JCA (as he then was) held:

“ The preponderance of authorities both at the Supreme Court and in this court state that a donee of a Power of Attorney has to sue in the name of the principal. He can then indicate that the principal is suing by his lawful attorney who is the agent or donee of the authority to sue.

..... but certainly not by the donee in his own right, for he has no such right independent of the Power of Attorney. “

Likewise, in **UNITED NIGERIA COMPANY LTD. vs. JOSEPH NAHMAN & ORS (2000) LPELR-10460 (CA) SANUSI JCA** (as he then was) held:

“An agent acting under a Power of Attorney should, as a general rule, act in the name of the principal. If he is authorized to sue on the principal behalf, the action should be brought in the principal name.”

By the above decisions of the appellate Courts a donee of a power of attorney has no legal competence to institute an action in his own name on the basis of powers conferred upon him by the Power of Attorney.

I therefore hold, in line with the above cited authorities that the Claimant has no locus standi to institute this matter or suit in its own name.

Consequently, this suit is struck out.

Hon. Justice Muawiyah Baba Idris

17/4/19

APPEARANCES:

OLUYEMI FABUNMI Esq. with MUAWIYAH YUNUSA Esq. for the Claimant.

V.O. EDEGBINI Esq. for the defendant.