

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON TUESDAY, THE 7TH DAY OF FEBRUARY, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV/19/16

BETWEEN:

MR. JUDE CHIDIEBERE

CLAIMANT

AND

MR. YAHAYA MSHELIA

DEFENDANT

JUDGMENT

On the 31/3/2016 Mr. Jude Chidiebere instituted this action against Mr. Yahaya Mshelia. He Claimed the following against the Defendant:

(1). An Order of this Court directing Defendant to hand over vacant possession of the 2 Bed Room Flat Apartment and premises at block 145 Flat 1 Bayajida street, phase 2 site 2, Kubwa Abuja to the Plaintiff.

(2). An Order of this Court directing the Defendant to put the said 2 Bed Room Flat apartment at the said Block 145 Flat 1, Bayajida street phase 2, site 2 kubwa Abuja (herein after called the Res) in a tenable condition as at the inception of the tenancy on the 6th day of March, 2010.

(3). An Order of this Court directing the Defendant to pay to Plaintiff mesne profit at the rate of N1, 232.87 per day until vacant possession is given to the Plaintiff.

(4). Special Damages of N500, 000.00 being the professional fee paid to Plaintiff solicitor for the Recovery of premises of the Res.

(5). N200, 000 as cost of this Suit.

The Defendant was served. He filed 2 Preliminary Objection which this Court dismissed. He also filed statement of defence on the 28/6/2016. Meanwhile he filed the memorandum of conditional appearance on the 19/5/2016.

On the 26/1/2017 the matter was struck out and later relisted. The Plaintiff opened its case on the 9/5/2017 and closed same on the 13/6/2018. The prolonged delay in opening and closing the case of the Plaintiff was because of the incessant application for adjournment filed by the Defendant Counsel.

On the 13/6/2018 the Court ordered that the Defendant Counsel should ensure that he opened the case of the Defendant. He never did. The Plaintiff Counsel had on more than one occasion applied for Court to foreclose the Defendant from opening and closing its case. The Court did not grant those applications. The Defendant Never comes to Court to open its Defence.

On 15/5/2019 the Court foreclosed the Defendant from opening and closing its case. The Court hereby deemed its Ruling of 15/5/19 in

which it foreclosed the Defendant from opening and closing its case as part of this case. The Court adjourned the matter for final addresses to be adopted on the 30/9/19. The Defendant were duly notified as usual by service of hearing notice on him. He never filed any final Address or responded to the one served on them by the Plaintiff.

On the 10/12/19 when the Court Scheduled for adoption of Final Address the Defendant filed a motion on notice for Court to vacate the foreclosure. The Court dismissed the application based on its reasoning in the Bench Ruling of 10/12/19.

Please Note that the said Ruling is also part of this Judgment. The Court allowed parties to adopt their Final Address and matter reserved for Judgment.

It is important to point out that the Defendant did not file any Final Address notwithstanding the lengthy time given for him to do so. The Court asked the Defendant Counsel to respond on point of law since it did not file any and since he is in receipt of the plaintiff's address served on him. The Defendant Counsel did not do so. This means that this Judgment is based on the testimony of the PW1, PW2, and PW3 whom the Defendant Counsel crossed examined as well as the Exhibits which they tendered in support of their testimonies it also based on the statement of defence and averment of the Defendants witnesses as attached to the statement of defence filed by them as if the said Defendant witness testified in Court fully and the said statement of Defendant on oath are deemed fully identified and adopted.

It is the case of the Defendant that he was let into the said property- 2 bed room Flat apartment situate at Block 145 Flat I Bayajida Street Phase 2, Kubwa Abuja. That the Res is owned by the estranged wife

of the Plaintiff. That he was let into the Res as a yearly tenant by the said estrange wife-**Cordelia Chikerenwa Anyatonwu** and that it is the said woman that has been collecting the rent from the Res. He claimed that he never defaulted in paying the rent. That cash receipt dated 15/12/12 and 20/3/13 were issued to him by the Plaintiff at the behest of the Plaintiff's estranged wife. That after the dissolution of the marriage between the Plaintiff and his wife he continued to pay rent to the said estranged wife. According to him in **paragraph 6** of his Statement of Oath

“Knowing fully well that the property is owned by plaintiff's estrange wife and that the Plaintiff has never informed the defendant orally that he is in need of the property”

He also stated and averred that he was served “Notice of Owner's Intention to Recover Promises” but was never served the “ Notice to Quit” “and claimed that the same was not served on him by the owner of the property” **paragraph 7.**

In summary the Defendant challenged the suit of Plaintiff that Court has no Jurisdiction to entertain the suit and determine the issues in dispute because relevant statutory notices were not served as provided in the statutes. That the Plaintiff has not disclosed any cause of action against him. That the Plaintiff also lacks the Locus Standi to institute this Suit not being the owner of the Res. That the Suit is vexatious, frivolous, unreasonable, illogical, gold-digging, abuse of Court Process and unmeritorious. He urged the Court to dismiss the Suit the Suit especially as the Plaintiff is not the owner of the Suit.

As already stated the Defendant did not call any witness-(even sole witness who is the Defendant himself to testify).

After waiting for several months for the Defendant to file their Final Address the Plaintiff on the 6/9/19 filed their Final Address which they served on the Defendant in the said Final Address the Plaintiff raised 2 issues for determination which are:

(1). “Whether on the preponderance of Evidence admitted before the Court the Claimant has established and proven his case”.

(2). “Whether the Claimant is entitled to the Reliefs herein sought as per his Claims”.

On Issue No.1-

The Plaintiff Counsel submitted that going by the evidence of the PW1 who is the Plaintiff in this case testified that on expiration of the tenancy he instructed his Solicitor to issue Statutory Notices to wit: “Notice to Quit” and “Notice of Owners Intention to Recover Possession”. That despite these notices, the Defendant refused and or neglected to vacate and hand over the Res in issue. That it is the refusal or neglect to deliver on the possession to Plaintiff that has caused this Suit in the first place.

He also submitted that it is evident that the Defendant as a yearly tenant pays a yearly rent of N450, 000.00 (Four Hundred and Fifty Thousand Naira) based on which he has let into possession of the Res. That he paid the stated rent to the Claimant. He tendered receipts he issued to the Defendant acknowledging the receipts of the money so received from the said Defendant. Those two Documents are Exhibits 1&2 – Tenancy agreement and Exhibit 2- Receipt evidencing the payment made.

That by the testimony of PW3- Anthony Aduikwu the evidence of PW1 was corroborated to the effect that possession was granted to Defendant by Claimant not his estranged wife. Again, that the

Claimant is the Landlord of the Res. He referred Court to witness statement on oath of CW3. On the expiration and other determination of the Tenancy within time and in the right manner the Plaintiff Counsel submitted that the Tenancy expired on the 6/3/16. That the Plaintiff orally notified the Defendant not to further renew same that he further issued and served the Statutory Notices on the Defendant. He referred Court to paragraph 7-9 of PW1's statement on oath. He referred to the Exhibit 1, Tenancy Agreement. He further submitted that the tenancy of the Defendant having expired, the Plaintiff served on the Defendant the Statutory 7 days Notice that the said 7 days Notice served on the Defendant is ideal since his tenancy has expired and he became Tenant at will. He referred the Court to the case of:

(1). Odutola Vs. Papersacks Nig. Ltd (2007) ALL FWLR (PT.350) 1214@1239

(2). Pan Asian African Co. Ltd Vs. National Insurance Corp. Nig. Ltd (1982) ALL NLR 229 @ 243.

He further submitted that by virtue of the provision of **Section 8 Recovery of Premises Act Abuja LFN 2004** that the Defendant was entitled to no more than a week's Notice. That in the present Suit the Plaintiff notified the Defendant orally that the tenancy will not be renewed any further as averred in paragraph 7 oath of PW1 and as stated in paragraph 3.18 Plaintiff's Tenancy Agreement thus Exhibit 1

“the Block 145 Flat 1, Bayajida Street, Phase 2 site 2 kubwa –Abuja will be taking back from the Tenant as at when due to the Landlord needs his Flat or property.”

He submitted that having been informed of the further non-renewal, the defendant was to have handed over the premises back to the

Claimant who gave him possession in the first place and which he defaulted to do. That being the case, the tenant- (Defendant) became immediately a Tenant-at-will as soon as the Tenancy expired and he remained so.

He further submitted that the 7 days Notice is in compliance with the law, particularly with regard to the fact that the Defendant's Tenancy had validly expired in line with the Tenancy Agreement –Exhibit 1. Again he submitted that there is no evidence challenging the title or the Legal right of the Plaintiff with respect to Res. That by Exhibit 1, the Plaintiff signed the said Exhibit 1 as the Landlord while his estrange wife signed as a witness in the said Tenancy Agreement – Exhibit 1.

He further submitted that the Defendant did not lead evidence to buttress his allegation of plaintiff's lack of title to the Res as averred in paragraphs 2, 3, 6, 7, 8e and 9 of his statement of Defence. That it is trite that even if the Defendant lead evidence in that regard, he is estopped from challenging the Title of the Claimant who put him in possession into the Res in the first place. That such averment challenging the title of the Plaintiff should ordinarily be expunged, discountenanced and disregarded. He referred the Court to Section 170 Evidence Act 2011 (as amended) and also to the case of:

Coker Vs. Adebayo (1968) NWLR 323

In further establishing that the Plaintiff proved his case on the preponderance of evidence. The Learned Counsel submitted that the defendant had entered appearance in this Suit and had filed the statement of Defence. Though he did not lead evidence before he was foreclosed. Hence there is nothing to prove under this ground since the appearance of the Defendant is presumption of having been served the Originating Process and Hearing Notice regularly. He

referred to Section. 168 (1) Evidence Act 2011 (as amended). He urged the Court to hold issue No.1 in favour of the Plaintiff.

On Issue No.2:

Whether the Plaintiff is entitled to the Relief sought as per his statement of Claim, taking the claim seriatim, the Counsel for the Plaintiff submitted, on the first head Claim that the Plaintiff has been able to establish and prove his claims as listed in accordance with the provision of **Section 19(1) Recovery of Premises Act LFN 2004**. That the Court is enjoined to grant the claim with respect to the possession of the ownership of the Res.

On the second Claim the Counsel submitted that parties like the Plaintiff and Defendant in this case, are bound by the agreements they freely entered into that such Agreement and terms thereof a re-sacrosanct. He referred Court to the Supreme Court case of:

Segun Babatunde Vs Bank of the North & 2 Ors (2011) 12 SC (PT.4) 1150

He further submitted that the Plaintiff and Defendant at paragraph 3.16 of the Exhibit 1 agreed that the Defendant will put back the Res in its Original tenantable state as comparable to when he took possession of same. That the Defendant cannot be allowed to renege on compliance of that term of the Tenancy Agreement.

On payment of Mesne Profit which is a profit accruing between 2 points of time between the date when the tenant ceases to hold the premises as a tenant and the date he gives up possession, the Plaintiff Counsel submitted that it is the contention of the Plaintiff that since the Defendant has refused to hand over vacant possession to him, he is entitled to be paid N1,232.87 per day, since the Defendant is a yearly tenant divided into 365 days which is the total

number of days within a Calendar year that the said amount – (Mense Profit) represent each days benefit accrued to the Defendant while still residing in the property in issue and for each day loss accrued to the Plaintiff for not having the use of the said Res.

On the 4th Claim that the Plaintiff further pleaded and proved his claims by tendering receipts issued by his Solicitor for payment for the said head claim. He referred to the said receipt which was admitted in evidence and marked as Exhibit 3.

He further contended that the Court of Appeal has renewed the earlier decision of the above head claim and have inevitably drawn a conclusion in the recent case of:

Naude Vs. Simon (2014) ALL FWLR (PT.753) 1878

Again that the Supreme Court had equally confirmed the dimensional shift in allowing a successful party recover the professional fee paid vide special Damages in the decision of the Apex Court in the case of:

Union Bank Plc vs. Okpara Chimaeze (2014) LPELR-22699 (SC)

On the issue of payment of cost of the Suit he submitted that it is entirely at the discretion of the Court. That the successful party is entitled to its cost unless there is a special reason to the contrary.

On why he should not be deprived of such award of cost, he referred to the case of:

Akinbobola Vs. Plisson Fisko (1991) LPELR-SC 182/1989.

He urged the Court to hold Issue 2 in favour of the Plaintiff as he is entitled to all the reliefs sought as per his Claim.

COURT:

In this case though the Defendant did not lead any evidence in form of testimony the Court had in the spirit of frontloading which has become part of our jurisprudence, deemed it as if the Defendant who filed a statement on oath had appeared before the Court to be examined in chief and re-examined though no cross-examination was conducted.

It is imperative to point out that the Defendant attached 2 documents to the statement of Defence. The documents are - **Certificate of Occupancy No: 597ew-138rz-11d2-13c72-cur3 File No.AB30617**. The Certificate of Occupancy is in the name of Chikerenwa Cordelia Anyatonwu. He also attached a document titled.

“ALLOCATION OF RESIDENTIAL QUARTERS”

Dated 9/5/91. Both documents were all Photocopies. The Plaintiff did not present the Originals of the documents to the Court. Though he gave notice to the Plaintiff to produce the originals of the document of title to the Res. It is important to also note that the said Letter of Allocation of Presidential Quarters was issued by the Ministry of External Affairs (now foreign Affairs). It was address to Miss.C. Anyatonwu. It was for allocation of the Res-

“Block 145

Flat 1

Phase II, Site, Kubwa

1 Bed room.”

It is important to note and point out that these 2 documents attached by the Defendant were all in the name of the estranged

wife of the Plaintiff- Chikerenwa Cordelia Anyatonwu and not in the name of the Defendant. It is also important to note that the Defendant in this case Mr. Yahaya Mshelia is a yearly TENANT and not a Landlord or Allottee of the Res.

On the part of the Plaintiff, he attached a Tenancy Agreement made between the Plaintiff and the Defendant. It was signed on the 6/3/10. There the Plaintiff signed as the Landlord while the Defendant signed as the tenant. Someone signed as the witness for the Plaintiff while the one also signed as the witness for the Defendant.

The Plaintiff also attached the 2 receipts- Exhibit 2. The receipts are issued by a company known as

“Chibelex Nigeria Ltd. Suit 320, Ambeez Plaza Opposite CAC, Wuse Zone 3, Abuja”

The receipts shows that the Plaintiff received from Mr. Yahaya the sum of N450, 000.00 for rent of the year 10/1/2012 to 10/1/2013. The first receipt was issued on 15/2/12. The second receipt was issued on the 20/3/13. A closer look at both receipts shows that the issuer has the same signature like that of the Plaintiff.

The Applicant also tendered in evidence a Letter dated 7/3/16 from the solicitor of the Plaintiff. The letter is title “Notice to Quit”. The Plaintiff equally attaches the Notice of Landlord’s Intention to Recover Possession. All these documents were tendered through the PW1 who is the Plaintiff.

The Plaintiff Witness also tendered other documents- the 4 documents pasted by the Court’s Bailiff – Useni Usman –Notice to Quit Landlord Intention to Recover Possession Certificate of Service of the Document. These documents are marked as Exhibit 4.

The Defendant Counsel never showed up to cross-examination DW2. The Court Bailiff.

DW3 did not tender any document but confirmed that the Plaintiff hired him as his agent. That he is the one who connected the Defendant as tenant to the Plaintiff. All these testimony by the PW1 and PW3 were not challenged or rebutted during the cross-examination by Defendant and Defendant Counsel. That DW3 narrated how the Plaintiff/PW1 had contacted him to get a tenant for the said house.

The PW1 had testified that how he bought the said Res though originally allocated to his estrange wife who is a Staff of Foreign Affairs. How the woman had the first right to purchase but did not. The PW1 did not deny that the Certificate of Occupancy is in the name of the estrange wife.

But even with all that the Defendant did not establish how he came about the Certificate of Occupancy he attached to his statement of Defence. He is neither the Landlord nor the Allottee of the Res. He did not join the wife of the Plaintiff as party. He had told Court that he is a tenant and had continue to pay rent to the estrange wife who he claimed is the owner of the property.

The Defendant did not show any evidence of payment of the Rent to the said wife. He did not attach any evidence of rent paid. The only evidence of payment of rent was the 2 receipts attached by the Plaintiff/PW1 showing that he received rent for 2012-2013 to 2014.

The testimony of PW3 was not rebutted because PW3 was able to identify the Tenant. He narrated how he contacted the Defendant and how he knew the Res and the Plaintiff and his then wife and how

the PW1/Plaintiff asked him to get a tenant when he was asked how he knew the Plaintiff and the house he said:

“He had been in charge of the house as Landlord even before the day I met. While celebrating the house after renovation he said if I could get him a good tenant to rent the house”.

The Defendant Counsel could not “break” the DW3 during cross-examination. He did not cross-examine the PW2 because he is a subpoenaed witness. He did not field the Defendant as a witness who has filed the statement on oath. No reason was given for not coming to testify before the Court. Most importantly he did not call the estrange wife of the Defendant as a witness or applied that she be joined as a party as co-Defendant.

Not attaching any receipt to show that he paid rent to the Plaintiff’s ex-wife cast a lot of doubt in the defence put up by the Defendant. There is no strong Claimant he is the owner of the Building. He did not deny being a tenant. He did not put up defence that he paid rent to anyone. He did not debunk the claim that he over stayed in the Rent. He acknowledged that he was let into the property by the Plaintiff and not his wife. He also acknowledged that he was served the Notice of Landlord Intention to Recover Possession. His denial of the receipt of the 7 days notice was not strong enough. The subpoenaed witness told Court that he served the Defendant those two notices.

Under cross- examination the PW2 was asked:

Question: Do you know the Defendant?

Answer: yes I know him.

Question: how did you know him?

Answer: I know the Defendant because of the Notice to Quit I served
On him.

Question: how many notices did you serve on the Defendant?

Answer: 2 “Notice-Notice to Quit” and “Owners Intention to Recover Premises”.

The same subpoenaed witness tendered the documents- 4 documents the notices and Affidavit of service of same and Certificate of Service too. It was admitted and marked as Exhibit 4. It is imperative to state that the Defendant was notified about the attendance of the PW2 to testify. They were served with Hearing notice. They were given chance to cross- examine the PW2 even after they failed to be in Court on the day he testified in Court on the 27/11/17.

On the 31/1/18 the Court foreclosed the Defendant from cross-examining the Defendant. It is imperative to note that from 9/5/17 until 10/12/19 the Defendant and/or his Counsel never came to Court.

A look at the Tenancy Agreement shows that the ex-wife of the Plaintiff signed as a witness to the Tenancy Agreement and not as the owner of the House/Res in the Agreement clause – Clause No 1 states:

“The tenancy shall be a yearly tenancy determinable by either Rent by 3 months notice in writing to the other”.

In this case the Plaintiff wrote a letter to the Defendant in March telling him that the tenancy shall not be renewed. Again in Clause 3.18 it states:

“The Block 145, Flat 1, Bayajida Street Phase 2 site 2 kubwa- Abuja will be taken back from the tenant as at when due to the Landlord needs his Flat or Property”.

The above and the Notices leave no one in doubt that the Plaintiff was right and had properly notified the Defendant. That notices are in accordance with the laid down rules, the tenant, as well as the provisions of the law in that regard the Defendant knows it. That might be his reason for not coming to Court for over two years to open his defence. Parties are bound by the Agreement they entered into.

A closer look at the statement of Defence shows the Defendant is only interested in stating that Plaintiff is not the Owner of the Res, yet he could not show or establish any adverse claim to the Res. One wonders whether he forgot that the issue in dispute in this case is that he Plaintiff who is the Landlord of the Res had asked Court to Order him the Defendant to give up vacant possession of the Res which he occupies as a yearly tenant and to put the said flat in a tenantable condition as agreed in clause 3.16 of the Tenancy Agreement. Again to pay mesne profit for overstaying for the period he became a tenant-at-will.

It is the law that any tenant to whom a proper notification to vacate a premises was given fails to vacate at the end of the tenancy is bound to pay for the period of overstay. Such payment, mesne profit, covers the period when the tenant ceases to hold the premises as a tenant and the date he gives up possession. In this case the Plaintiff had duly informed the Defendant about termination of the tenancy. He gave two notices as Statutorily required. The defendant was duly served. The notification was done within the specified period going by both the tenancy agreement, clause 3.18

and the letter of 15/3/16- Exhibit 3. The Defendant failed to vacate the premises. Hence is bound to pay the mesne profit stating from the 16/8/16, to the day he vacates the premises. That is the law and that is what this Court holds.

The issue before this Court is not on ownership of the Res. It is not for the Defendant to tell Court who owns the property. The same Defendant did not even present the ex-wife of Plaintiff as owner and had not tendered any or attach any document to show that he paid any rent to the ex-wife of the Plaintiff. The Plaintiff is not claiming any outstanding rent too. There is no adverse claim as to ownership of the Res. So the Plaintiff has by the testimonies of the 3 witnesses PW1-PW3 been able to establish his claim and this Court has no reason not to grant same as his case is very meritorious.

The Court hereby grant the Plaintiff's Claims to wit:

Claim No.1 grant

Claim No.2 grant

Claim No.3, the Defendant is to pay to Plaintiff the Sum of N500.00 per month from 1st September, 2015 Until he vacate the said premises.

The Plaintiff should bear the cost of his solicitor's fees.

**This is the Judgment of this Court delivered today ----- Day of -----
-----2020.**

K.N.OGBONNAYA

HON.JUDGE

