

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA COURT 4, FCT., ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE O. O. GOODLUCK**

**SUIT NO. FCT/HC/CV/2189/2013**

**B E T W E E N:**

**GODFREY OBUNEME**

} **PLAINTIFF**

**AND**

**PETER MBADIWE**

} **DEFENDANT**

**J U D G M E N T**

The Plaintiff is the owner of the property comprising of 20 Rooms of residential apartments and 10 Room apartment for lodging in Zuba, FCT, Abuja.

By a lease agreement the Plaintiff let out the 20 rooms and another set of 10 Rooms (hereinafter referred to as the property) to the Defendant from the 1<sup>st</sup> March, 2010 for a term of three years at an annual rate of ~~N~~500,000.00 (Five Hundred Thousand Naira). The property at the time of the lease included several items such as Mattresses, Ceiling Fans, Coloured Television, Deep Freezers, Fridge e.t.c. It was a term of the agreement that the annual rent will be reviewed in the sum of ~~N~~250,000.00 (Two Hundred and Fifty Thousand

Naira) every three years and at least three months notice to quit shall be served on the Defendant.

The Plaintiff contends that the Defendant failed to pay his rents after it was reviewed from ~~₦~~500,000.00 (Five Hundred Thousand Naira) to ~~₦~~750,000.00 (Seven Hundred and Fifty Thousand Naira) effective from the 2<sup>nd</sup> March, 2013. Plaintiff further claims that the Defendant kept the premises in a deplorable state which is unfit for human habitation.

Notwithstanding, the service of a Notice to Quit and a seven days owner intention to recover possession of the property the Defendant has failed and or neglected to vacate possession.

Aggrieved by the conduct of the Defendant the Plaintiff has now instituted this suit and is praying this Court for an order for immediate possession, the sum of ~~₦~~1,221,100.00 (One Million, Two Hundred and Twenty-One Thousand, One Hundred Naira) being the cost of damages caused to the Plaintiff's immovable properties as well as an order for the payment of ~~₦~~2,100,000.00 (Two Million One Hundred Thousand Naira) representing the cost of damages caused to the Plaintiff's immovable properties and ~~₦~~7,000,000.00 (Seven Million Naira) for damages for breach of the terms of lease arising from the Defendant's failure/neglect to maintain the property. Plaintiff also claim for an order directing the Defendant to offset the electricity bills until possession is given up and

mense profit at the rate of ~~N~~62,500.00(Sixty-Two Thousand Five Hundred Naira) monthly until possession is delivered to the Plaintiff.

In reaction, the Defendant vehemently refuted the Plaintiff's claim in his Statement of Defence. In addition, the Defendant Counterclaimed and sought for a declaratory order that the Plaintiff had no right of entry into the property during the subsistence of the Notice to Quit.

Defendant/Counterclaimant also claimed the sum of ~~N~~3,000,000.00 (Three Million Naira) special damages for the embarrassment harassment and economic loss occasioned by the unlawful contract of the Plaintiff.

Defendant also claimed for an order of injunction against the Plaintiff and his agent and ~~N~~1,500,000.00 (One Million, Five Hundred Thousand Naira) general damages for breach of contract as well as interest on the Judgment sum.

At trial, A. B. Okoruka Esq., Counsel for the Defendant on the 20<sup>th</sup> June, 2018 informed this Court of his inability to proceed with the counterclaim, this Court adjourned only for the Defendant to abandon the counterclaim.

At trial, both parties testified personally by adopting their respective witness statements, they were also respectively cross

examined. The Defendant called two other witnesses, an Estate Agent and his Wife.

At the conclusion of trial both Counsel filed and exchanged final written addresses in line with the Rules of this Court. Defendant filed a final Written Address dated 4<sup>th</sup> December, 2018, There, the Defendant's Counsel, E. I. Odo Esq., formulated three issues for determination as follows;

- a) Whether Exhibits P.W.1B<sup>1-5</sup>, P.W.1E, P.W.1H and P.W.1J are admissible in evidence upon which this Honourable Court can rely in the determination of this case?
- b) Whether the Plaintiff has complied with the conditions precedent to the recovery of possession of the landed property from the Defendant.
- c) Whether the Plaintiff is entitled to the reliefs he is seeking from this Honourable Court.

Onyinye C. Nweke Mrs., Learned Counsel for the Plaintiff formulated two issues for determination in the Plaintiff's Written Address dated 1<sup>st</sup> February, 2019.

1. Whether the Plaintiff has proved his case to be entitled to the reliefs sought in his statement of claim.

2. Whether the Court can make consequential or incidental order for the arrears of rent to be paid to the Defendant.

Having considered both sets of the issues for determination, I am inclined to consider the Plaintiff's first issue for determination as well as the Defendant's second issue for determination first as both issues are arrived on similar points.

Learned Counsel for the Plaintiff has submitted that the lease agreement between the Plaintiff and the Defendant, Exhibit P.W.1A<sup>1-4</sup> provides in paragraph 4 that each party shall have the right to terminate the lease after giving the other party, at least 3 months notice to terminate the lease. Mrs. Nweke then went on to submit that the Defendant was served with a Notice to Quit, Exhibit P.W.1D even though the Defendant declined to acknowledge receipt. The attention of this Court was then drawn to the witness statement on oath of the Defendant, specifically paragraph 4, and j wherein the Defendant admitted that he was served with a Quit Notice dated 31<sup>st</sup> August, 2012 and 10<sup>th</sup> February, 2013.

Learned Counsel for the Plaintiff recounted that the notice to quit was to terminate the tenancy within five months of service. She further recounted that the Defendant was thereafter served with Exhibit P.W.1E,

the Notice of Owner Intention to Recover Possession dated 16<sup>th</sup> February, 2013.

Plaintiff's Counsel further submitted that both notices are valid and effectual entitling the Plaintiff to the possession of the property. Mrs. Nweke further argued that by usage and practice of the Court a solicitor is authorized to act for his client. She reasoned that there is no law requiring that a lawyer must obtain written authority from his client prior to the issuance of the statutory notices.

Learned Counsel for the Defendant has submitted to the contrary, he contends that both Exhibits P.W.1D and P.W.1E are invalid and ineffectual in law, consequently the conditions precedent for the recovery of possession of the property has not been satisfied by the Plaintiff. Defendant's Counsel posits that the Plaintiff did not disclose in his statement on oath that he served the statutory notices even though he pleaded that both notices were issued and served on the Defendant.

The Defendant's Counsel draw this Court's attention to the Notice to Quit dated 31<sup>st</sup> August, 2012 whilst the seven days owners intention to recover possession is dated 16<sup>th</sup> February, 2013 he noted that the seven days of intention to recover possession was issued and served during the subsistence of the notice period given to the Plaintiff for the termination of his tenancy.

Defendant's Counsel has submitted and quite rightly too, that the Notice to Quit must first come to an end before the seven days notice of intention to recover possession must be issued and served on the Defendant in other words, both statutory notices must run concurrently.

In effect, the Notice of Intention to Recover Possession was served at a time when the time given to the Defendant to quit possession of the property had not yet lapsed.

Defendant's Counsel then commended this Court to the decision in **AFRICAN PETROLEUM LTD. v. J. K. OWODUNNI (2004) ALL F.W.L.R. (PART 208) page 771 at 797 para. C** where the Apex Court held that: for a notice to quit to be effective, it ought to determine at the end of the current term of the tenancy year. Counsel recounted that the Plaintiff admitted under cross examination that he served the Defendant the Notice to Quit in April, 2013 whilst the Notice to Quit was said to have been served on the 21<sup>st</sup> February, 2013.

In view of this crucial submission made by the Defendant's Counsel, I have had cause to examine both statutory notices.

A careful reading of the Notice to Quit, Exhibit P.W.1D reflects that it was dated 31<sup>st</sup> August, 2012. The Exhibit P.W.1D reflects the following in its first paragraph

*I, G.N. Umerie Esq. Legal Practitioner to your Landlord/Lessor, Mr. Godfrey Obuneme and on his behalf give you Notice to Quit and deliver up possession of the real estate and the appurtenances situate at Ikwa Zuba, FCT Abuja comprised in your lease agreement dated 1<sup>st</sup> March, 2010 which you held of him on the 28<sup>th</sup> day of February, 2013. (Emphasis is mine).*

The inference that can be drawn from the foregoing portion of the Quit Notice is that the Defendant is required to give up possession latest on the 28<sup>th</sup> February, 2013. It is pertinent to state that upon an examination of the lease agreement, Exhibit P.W.1A<sup>1-4</sup> the fourth paragraph of the lease agreement provides thus:

WITNESS AS FOLLOWS;

- 1. That the lessee shall be paying an annual rent of ~~N~~500,000.00 (Five Hundred Thousand Naira) for the first three years commencing from the 1<sup>st</sup> day of March 2010 which shall be paid one month before the expiration of each year of the lease*
- 2. That every three years the rent shall be increased by ~~N~~250,000.00 (Two Hundred and Fifty Thousand Naira).*

Flowing from paragraph 1 of the Exhibit P.W.1A<sup>1-4</sup> cited supra, I am of the view that the notice to quit is valid and effective in law as it

terminates on the last day of the tenancy year, that is, on the 28<sup>th</sup> day of February, 2013.

A careful examination of the Notice of Owners Intention to Recover Possession, Exhibit P.W.1E reflects that it was dated 16<sup>th</sup> February, 2013. I find it crucial to replicate hereunder the contents of the Exhibit P.W.1E it provides thus:

*I, G.N. Omoruyi Esq., Legal Practitioner to your Landlord/Lessor, Mr. Godfrey Obuneme and on his behalf do hereby give your (sic) 7 days notice that unless peaceable possession of the property and appurtenances situate at Ikwa, Zuba, FCT Abuja which you lease to him and which expires on 28<sup>th</sup> February, 2013 next, I, G.N. Omoruyi Esq. Shall on the 1<sup>st</sup> day of March, 2013 apply to Court to issue a warrant to eject you and your agents/servants privies there from.*

Flowing from the foregoing, the deduction that can be garnered is that the Plaintiff gave notice of his intention to recover possession by applying to the Court for a warrant to eject the Defendant on the 1<sup>st</sup> March, 2013 after his tenancy expired on the 28<sup>th</sup> March, 2013.

In effect, he gave notice of his intention to apply to recover possession from Court on the 1<sup>st</sup> March, 2013 the following day after the tenancy expired. The seven days notice, Exhibit P.W.1E, going by the endorsement noted on it by the Defendant's Counsel was signed by the

Defendant on the 1<sup>st</sup> February, 2013 and served on the 16<sup>th</sup> February, 2013. Either ways of service, I am of the inescapable conclusion that the seven days notice, Exhibit P.W.1F was served during the pendency of the 5 months duration given to the Defendant to determine the tenancy. I therefore endorse the submission of the Defendant's Counsel that Exhibit P.W.1F is not in accord with mandatory provision in Section 9 of the Recovery of Premises Act. The Notice of Owner's Intention to recover possession ought to have been issued and served after the terminal date of the tenancy noted in the notice to quit. At the earliest it should have been issued the following day after the terminal date of the Notice to Quit, precisely the next day after the 28<sup>th</sup> February, 2013.

Both statutory notices cannot run concurrently. This being the case the notice of owner intention to recover possession is invalid, consequently the Plaintiff's relief for and order for possession must fail.

The Defendant's Counsel has further challenged the validity of the statutory notices on account of Section 2 of the Recovery of Premises Act, contending that the statutory notices issued and served on the Defendant are defective on account of Section 2 of the Recovery of Premises Act. The section provides that the agent is any person usually employed by the landlord in the letting of the premises or in the

collection of rent hereof or specially authorised to act in a particular manner by writing under the hand of the landlord.

Relying on this provision, the Defendant's Counsel has submitted that the statutory notices were issued by the Plaintiff's solicitor, this being the case Defendant's Counsel reasons that the Plaintiff's solicitor is an agent of the landlord as envisaged under Section 2 of the Act. Defendant's Counsel then went on to assert that the statutory notices, Exhibits P.W.1D and P.W.1F were respectively issued by the Plaintiff's solicitor without a written authorization by the Plaintiff.

In the absence of the written authority, therefore the Defendant's Counsel has urged this Court to hold that this suit is incompetent. Defendant's Counsel has submitted that the non compliance with Section 2 of the Act is fatal to this proceeding. Accordingly, all steps taken in furtherance of both statutory notices are a nullity. He commended this Court to the case of **GABRIEL MADUKOLU v. JOHNSON NKEMDILIM (1962) ALL N.L.R. page 587.**

I am however unimpressed by the submission of Defendant's Counsel on the necessity for a written authorization by the landlord having examined the state of the pleadings and evidence led in this suit. In the absence of the credible and admissible evidence, the submissions of Counsel no matter how brilliant will be discountenanced by the Court.

The point that is, being made here is that the allegation of non authorization in writing of the statutory notices are not predicated on pleadings and evidence. In the circumstance, the statutory notices cannot be impugned on the conjectures of the Defendant's Counsel. The Defendant must plead these facts and evidence led in support of the assertion before it can be challenged by the Defendant's Counsel.

I now turn to the reliefs sought. The Plaintiff is by prayer one, seeking for an order of possession. This leg fails based on the reasoning of the Court hitherto noted in this Judgment, that the Plaintiff has only issued a valid notice to quit to determine the tenancy but failed to issue and serve the appropriate seven days notice of intention to recover possession from the Defendant.

Leg two also fails by this leg Plaintiff is praying this Court for damages for cost of his moveable properties. Plaintiff failed to state the type of damages being claimed, is it special, general or exemplary damages? The claim of ₦1,221,100.00 (One Million Two Hundred and Twenty-One Thousand One Hundred Naira) is seemingly in the realms of special damages which must be specifically pleaded and particularized in the statement of claim. Though the Plaintiff avers that the total value of the damaged goods are at ₦1,221,100.00 (One Million Two Hundred and Twenty-One Thousand One Hundred Naira) he

failed to disclose the breakdown and value of each and every item allegedly damaged in order to show how he arrived at the claim for damages in the sum of ~~N~~1,221,100.00 (One Million, Two Hundred and Twenty-One Thousand, One Hundred Naira). Besides, Plaintiff tendered certain receipts in evidence without leading evidence to connect the receipt with the moveable properties which he contends have been allegedly damaged by the Defendant. It is not the duty of the Court to examine the bundle of receipts dumped by a witness at trial and conjecture which one of them is linked to the specific items allegedly damaged. Having failed to do the needful the claim for damages remains unproven and is accordingly disregarded.

Leg 3 of the Plaintiff's claim for mense profit succeeds. Having held that the Notice to Quit is valid and effective in law and evidence has been led to the effect that: the sum ~~N~~750,000.00 (Seven Hundred and Fifty Thousand Naira) is payable per annum with effect from 1<sup>st</sup> March, 2013.

The Defendant is hereby ordered to pay mense profit at the rate of ~~N~~62,500.00 (Sixty-Two Thousand Five Hundred Naira) monthly from March, 2013 until the possession is delivered.

Leg four also fails I have examined the lease agreement and note that the leasee is expected to maintain the premises.

Again, the Plaintiff is under an obligation to state specifically the damages and the cost of restoration of the damages. In other words, the Plaintiff has failed to specifically state how he arrived at the sum of ₦7,000,000.00 (Seven Million Naira) claimed. Besides, he has failed to state whether he is claiming for special, general or exemplary damages. Each species of damages carries with it different considerations and parameters for the award for awarding damages, for instance in the case of special damages, the Plaintiff must plead the particulars of special damages and it must be strictly proved. A claim of damage per se is speculative, the Court grant a relief on damages without the Plaintiff stating the kind of damage sought.

In this instance, the Plaintiff failed to disclose the type of damages this Court is to award ₦7,000,000.00 (Seven Million Naira). It is not for the Court to conjecture the kind of damage being claimed. This leg of claim fails.

Leg 5 also fails on account of the Plaintiff's failure to plead facts in support of the claim for offsetting the electricity bill? How much is outstanding and payable on the electricity bill? This is untold by the Plaintiff in his pleadings. No electricity bill was tendered before this Court. It is settled that the contents of a document must be proved by

the document itself. This Court has been left in the limbo on account of this leg of the relief it therefore fails.

Cost in the sum of ~~N~~300,000.00 (Three Hundred Thousand Naira) is hereby awarded in favour of the Plaintiff.

**O.O. Goodluck,  
*Hon. Judge.*  
27<sup>th</sup> January, 2020.**

**APPEARANCES**

**Parties absent**

**Onyinye C. Nweke Mrs.: For the Plaintiff**

**R. E. Ehet Esq. Holding the brief for Odo Esq.: For the Defendant.**