HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA ABUJA
ON THE 3RD MARCH, 2020
BEFORE HIS LORDSHIP; HON JUSTICE MARYANN E ANENIH
(PRESIDING JUDGE)

SUIT NO: FCT/HC/CV/638/19

BETWEEN

PROF CHIDOZIE EMENUGA
(SUING THROUGH HIS LAWFUL ATTORNEY, PATRICK I.N IKWUETO, SAN DOING BUSINESS IN THE NAME AND STYLE OF IKWUETO LAW FIRM) .....**PLAINTIFF**

AND

HON. GHALI NA'ABA UMARU……DEFENDANT

JUDGMENT

The Plaintiff claims against the Defendant by a Statement of Claim filed on the 17th April 2019 as follows:

1. An Order granting the Plaintiff immediate possession of the premises known as No. 1 Salween Close, Maitama District, Abuja consisting of all that 6 bedroom detached house with 2 Bedroom guest chalet and 4 bedroom servants quarters, serviced with 22 air conditioners ('Demised Premises').
2. An Order for the Defendant to pay the sum of 108, 333, 333.33 (One Hundred and Eight Million, Three Hundred and Thirty Three Thousand, Three Hundred and Thirty Three Naira, Thirty Three Kobo only) being the outstanding balance before the determination of the said tenency on 12th February 2019 for:
   i. The balance of rent from 25th May 2016 to 24th May 2017 at the rate of ₦4, 166, 666.66 per month = N25,000,000.00
   ii. The rent from 25th May 2017 to 24th January 2019 at the rate of ₦4,166,666.66 per month = ₦83,333,333.33
   = ₦108, 333,333.33
3. The Sum of ₦4,166,666.66 (Four Million, One Hundred and Sixty Six Thousand, Six Hundred and Sixty Six Naira, Sixty Six Kobo Only) monthly as mense profit accruing to the Plaintiff

from 12th February 2019 when the tenancy of the demised premises legally determined until possession of the demised premises is delivered up by the Defendant.

4. 10% interest on the Judgment sum until the same is fully liquidated.
5. The sum of ₦4,000,000.00 (Four Million Naira only) being the cost of this action.
6. Such further order(s) which the Honourable Court may deem fit to make in the circumstance.

The Defendant did not file a memorandum of appearance, statement of defence nor any other process in this suit.

The matter came up for hearing on the 30th October 2019 and the defence counsel applied for an adjournment to enable them defend this suit. The matter was adjourned to the 27th February, 2020 at the instance of the defendant.

The matter came up on the 27th of January 2020, both parties were represented by counsel. And the learned SAN for Plaintiff applied that Judgment be entered in his favour. The defence Counsel who was in Court raised no objection.

From the records before the court, the defendant was served with the originating processes on the 16th May 2019 and there was no corresponding reaction to same by filing of any response or defence.

The plaintiff attached a 29 paragraph statement of claim to his writ of summons alongside a 33 paragraph statement on oath deposed to by Stephen Ani with attached Exhibits.

I have considered the case of the plaintiff as presented before the court and the oral address of plaintiff's counsel. And I am of the view that the issues arising for determination here are:

1. *The propriety of proceeding to judgment as prayed by plaintiff.*

2. *The effect of the unchallenged evidence of the plaintiff.*
3. *Whether the plaintiff is entitled to the reliefs sought in the statement of claim.*

On the first issue which is the propriety of entering Judgment at this stage of the proceedings, I refer to Order 21 Rule 1 and 7 of the Federal Capital Territory High Court Civil Procedure Rules 2018.

See also **SCOA (NIG) PLC V. THE REGTD TRUSTEES OF METHODIST CHURCH (2016) LPELR-40194 PG.20,PARAS C-E.**

The application for Judgment under the circumstance has therefore been properly made.

Issue one is resolved in favour of the plaintiff.

Issue two is the effect of the unchallenged evidence of the plaintiff.

A cursory glance at the record reveals clearly that the defendant did not adduce any evidence in the defence of this matter.

As earlier observed, the defendant did not file a memorandum of appearance nor conditional appearance. Despite representation by Counsel, the defendant did not make any move to file a statement of defence nor any other process in opposition to this Suit. It is on record that the defence counsel did not raise an objection when the plaintiff counsel asked the court to enter judgment. As it currently stands the defendant is not properly before the Court.

It is well settled, and the apex Court has in a plethora of decided cases pronounced that facts not denied are deemed admitted and that the Court can rely on the unchallenged evidence of a party properly placed before the court and act on it accordingly. See

OLOHUNDE V. ADEYOJU (2000) LPELR-2586(SC) (P.33,PARAS C-D) where His Lordship Justice Iguh JSC resonated on this position that;

"The law is well settled that where the evidence given by a party to any proceedings was not challenged by the opposite party who had the opportunity to do so, it is always open to the court seized of the case to act on such unchallenged evidence before it."

See also

ZENITH BANK PLC V. BANKOLANS INVESTMENT LTD & ANOR (2011) LPELR – 9064 (CA) Pg. 35 -36 para B-A

STANLEY K. C. OKONKWO V. ANTHONY EZEONU & ORS (2017) LPELR-42785(CA) Pg. 37 para D-F

VITACHEM (NIG) LTD V. DSM SINOCHEM PHARMACEUTICALS INDI PRIVATE LTD (2017) LPELR - 43199(CA) Pg. 13 Para C-E

As it stands the only evidence before the court in respect of this matter appears to be that of the plaintiff.

In the present circumstance therefore the court would have to accept the evidence of the plaintiff where it is found to be credible and act on it accordingly.

Issue two is therefore resolved in favour of the plaintiff.

Issue three is whether the plaintiff is entitled to the reliefs sought in the statement of Claim.

It is trite that once a tenancy is created, it must be determined one way or the other before a landlord can re-take possession. No court of law is competent to make an order for recovery / possession of premises where the tenancy is not validly determined. A proper notice to quit and notice of intention to proceed to recover possession are conditions precedent to bringing an action for possession, and failure to

serve any of the notices robs the Court or tribunal of jurisdiction. See the following cases;

AP LTD V. OWODUNMI (1991) LPELR-213(SC) (PG.27, PARAS A-B)

SPLINTERS NIGERIA LIMITED & ANOR V. OASIS FINANCE LIMITED (2013) LPELR-20691 (CA) (P.33, PARAS, B-D)

How then should the current Tenancy be duly determined? The procedure for determination of the tenancy would be mainly based on the type of tenancy existing and subsisting between the parties.

And in circumstances such as this where there's no opposition to the claim nor evidence in rebuttal, the burden on the plaintiff is that of minimal proof. See **LARMIE V. DATA PROCESSING MAINTAINANCE SERVICES (2005) LPELR-1756 (SC) (PG.38-39, PARAS C-A)**

Furthermore it is pertinent to state that the extension of tenancy from a particular period to another is contingent upon payment of rent for a period of time. This is the situation in this instance where there's no express stipulation of such extension of tenancy but by payment of rent. See

ODUTOLA & ANOR V. PAPERSACK NIGERIA LT (2006) LPELR-2259(SC) (P.48)

The procedure for determination of the instant tenancy would be mainly based on the type of tenancy existing and subsisting relationship between the parties.

See

ADEMOLA A. ODUNSI & ANOR V. DR. STEPHEN R. ABEKE (2002) LPELR-12167(CA) (P.14, Paras.F-G) where His Lordship Justice Aderemi resoned that:

> *"When a tenancy for fixed term of years expires by effluxion of time and the landlord continues to accept rents from the tenant yearly, it will be implied that parties have agreed to convert their tenancy into a yearly one determinable by the length of notice as prescribed by law."*

See also:

BOCAS NIGERIA LTD V. WEMABOD ESTATES LTD (2016) LPELR-40193 (CA) (P.18, PARA, A)

Where his Lordship Justice Augie postulated that

> *"…There are 3 main types of tenancy, tenancy at will, periodic tenancy and fixed term (or term certain"*

The undisputed facts before the court is that the tenancy was extended at a new rate and the defendant failed, neglected and refused to pay the demanded rent of ₦50,000,000.00 per annum for the property but has been in occupation of same. As seen in paragraphs 14, 15, 16, 17, 18, 19 and 20 of the Plaintiffs statement of claim.

Thus, the type of tenancy subsisting between the parties would have to be inferred from facts of the plaintiff properly before the court. See

OLOJEDE & ANOR V. OLALEYE & ANOR (2012) LPELR-9845 (PP. 35-36, PARAS D-B) where his Lordship Justice Denton West reflected on various categories of tenancy thus:

> *"In resolving this issue, I wish to state that there are various categories of tenancy under our laws and they include:*
>
> *(1) Contractual tenancy*
>
> *(2) Statutory tenancy*

(3) Tenancy at sufferance;

Contractual tenancy is the usual or common one that involves agreement between the landlord and tenant written or oral on the terms and conditions of the tenancy. A statutory tenancy is a creation of statute for the benefit of the tenant and does not depend on the will or acceptance of the landlord or on the existence of a contractual tenancy.

Tenancy at sufferance results from initial lawful occupation or possession either by contractual tenancy or license given by the owner or person entitled to the right of occupancy of premises and owners when the tenancy or license expires and the tenant or licensee holds over possession.

See also

CHAKA V. MESSRS AEROBELL NIG LTD (2012) LPELR-8392 (CA) (PP. 19-21,PARAS. D-E)

I have gone through the attached statement of claim wherein the plaintiff in paragraph 19, 21 and 22 averred that he instructed his solicitor to write a letter requesting the defendant to vacate and give up possession of the demised property on or before the expiration of 14 days. And that despite the letter the defendant continues to hold on to the demised premises. And the plaintiff avers that following the defendant's refusal to vacate the demised premises the plaintiff has caused the defendants to be duly served a 7 day's Notice to Quit dated 31st January 2019. And upon the refusal to deliver up possession of the demised premises, the plaintiff further caused to be issued and served on defendant a Notice of Owners Intention to Recover Possession dated 12th February 2019 on the defendant.

It is imperative to note that where a tenant for a fixed term refuses at the expiration of his tenancy to vacate possession, without the consent of the landlord and continues in possession, he would at common law be a tenant at sufferance. The Supreme Court resonated on the nature and conceptualization of Tenancy at sufferance in the following cases.

ABEKE V. ODUNSI & ANOR (2013) LPELR-20640(SC) (P. 26, PARAS. C-F) where his Lordship Justice Ariwoola JSC resonated that:

> *"where a tenant for a fixed term refuses at the expiration of his tenancy to vacate possession and wrongfully, that is, without the consent of the landlord, continues in possession, he would at common law be a tenant at sufferance. A tenancy at sufferance arises where a tenant, having valid tenancy, holds over without the landlord's assent or dissent. Such a tenant differs from a trespasser in that his original entry was lawful, and from tenant at will in that his tenancy exists without the landlord's assent. The tenancy may be determined or terminated at any time; and may be converted into a yearly or other periodic tenancy in the usual way." See; Megarry & Thompson, A Manual of the Law of Real Property 319, sixth edition 1993."*

See also:

BRIGGS V. C.L.O.R.S.N & ORS (2005) LPELR-805 (SC) (P. 39, PARAS A-F)

Thus in the instant case the defendant appears from the facts placed before the Court, to have started as a contractual tenant when he moved into the premises. And upon the expiration of the term certain became a tenant at sufferance. And as gleaned from the statement of claim before the court, somewhere along the line when the defendant stopped paying rent with the new rate as instructed by the plaintiff, the tenancy naturally by operation of law was further translated to a tenancy at will. See

ODUYE V. NIGERIA AIRWAYS LIMITED (1987) LPELR-2264(SC) (PP. 30-32,PARAS. F-F)

Having found that the subsisting tenancy is a Tenancy at will, the next thing to decipher is how a Tenancy at a will is determined.

It is settled law that a tenancy at will is determinable by seven days notice of owners intention to apply to recover possession.

See

BOCAS NIGERIA LTD v. WEMABOD ESTATES LTD (SUPRA) (PARAS, F-B) where his Lordship Justice Augie postulated that:

> *"That is the law - a tenancy at will is determinable by seven days' notice of intention of the landlord to recover possession, which was complied with, and as the Supreme Court did say in Odutola V. Papersack Nig. Ltd. (supra)…"*

See **IHENACHO & ANOR V. UZOCHUKWU & ANOR (1997) LPELR-1460(SC) (PP.17-18,P G-E)**

See also: **SECTION 7 AND 8 OF THE RECOVERY OF PREMISES ACT.**

Also before the court are facts relating to 7 clear days Notice to Quit which appears on the face to have been received by the defendant and also a certificate of service of same.

It is trite that a tenant at will is determinable by seven days notice. See;

BOCAS NIG. LTD V. WEMABOD ESTATES LTD (SUPRA) LPELR-40193(CA)(PP. 28-29, PARAS F-B) where his Lordship Justice Augie JCA resonated that:

> *"… a tenant at will is determinable by seven days' notice of intention of the landlord to recover possession, which was complied with, and as the supreme court did say in Odutola V. Papersack Nig. Ltd.(supra), 'even if six months' notice was given, it does not, per se, change the nature and the legal character of the tenancy in issue"*

This Court under the circumstance therefore finds the highlighted averments of the plaintiff credible and that the tenancy relationship between the parties has been duly and effectively determined by the seven days notice. And I therefore so hold.

The first relief of the plaintiff is for An Order granting the plaintiff immediate possession of the premises known as No. 1 Salween Close, Maitama District, Abuja consisting of all that 6 bedroom detached house with 2 Bedroom guest chalet and 4 bedroom servants quarters, serviced with 22 air conditioners ('Demised Premises').

Going by the finding of the court above, suffice to say, this relief is easily resolved. The unchallenged evidence before the court is to the effect that the tenancy has been duly determined. And the plaintiff having served the relevant notices and applied to court for recovery, the entitlement to possession of the premises has been duly proved. See **IHENACHO & ANOR V. UZOCHUKWU & ANOR (SUPRA) LPELR-1460(SC) (PP.17-18,P G-E)** where his Lordship Justice Iguh postulated that:

> *"…On the determination of the tenancy, he shall serve the tenant with the statutory 7 days' notice of his intention to apply to the court to recover possession of the premises..."*

The first relief has been made out.

The second relief is for an Order for the Defendant to pay the sum of ₦108, 333, 333.33 (One Hundred and Eight Million, Three Hundred and Thirty Three Thousand, Three Hundred and Thirty Three Naira, Thirty Three Kobo only) being the outstanding balance before the determination of the said tenancy on 12th February 2019.

It is clear from the finding of this court hitherto that this claim for arrears of rent has been successfully made out, moreso when there's no opposition to same.

The third relief is for the Sum of ₦4,166,666.66 (Four Million, One Hundred and Sixty Six Thousand, Six Hundred and Sixty Six Naira, Sixty Six Kobo Only) monthly as mense profit accruing to the

Plaintiff from 12th February 2019 when the tenancy of the demised premises legally determined until possession of the demised premises is delivered up by the Defendant.

Naturally by presumption of law mesne profit begins to run from the moment of due determination of the Tenancy until the tenant hands over possession to the landlord. No facts were rendered to to show that the defendant handed over possession to the plaintiff, upon due determination of the tenancy. The plaintiff is therefore entitled to mesne profit as claimed.

The fourth claim is for 10% interest on the Judgment sum until same is fully liquidated. The Civil Procedure Rules of this Court makes room for the discretionary grant of post Judgment interest of this nature. And I am of the view that such interest ought to be awarded in this instance. See Order 39 Rule 4 of the Federal Capital Territory High Court Civil Procedure Rules 2018.

And

ODUNSI & ANOR V. ABEKE (SUPRA) PARAS.F-G

The fifth relief is for the sum of ₦4, 000,000.00 (Four Million Naira only) being the cost of this action.

The defendant did not challenge nor controvert the evidence of the plaintiff on the cost of this suit. The law is trite that evidence not denied nor challenged is deemed admitted. See

ASAFA FOODS FACTORY LTD V. ALRAINE NIGERIA LTD (2002) NWLR 12 (PT. 781) 353 or LPELR 570 (PG. 28-29 Para F – G)

It is also well settled that award of cost or action of this type is in the nature of special damages which must be specifically pleaded and proved. In my view the required standard of proof was not met by the statement of claim. See

FHOMO NIG. LTD V. ZENITH BANK PLC(2016) LPELR-42233(CA) (PG. 36 Para A)

> *"It is not sufficient to assert that a certain amount was expended in the recovery action, there must be evidence to prove such assertions. Besides, I agree with the appellant that cost of the recovery action is in the nature of special damages, which must be specifically pleaded and proved."*

I have not seen any receipt of bill of charges to substantiate the claim of the plaintiff as having been made out in this instance. This doesn't appear to be contemplated under Order 21 Rule 1 and 7 of Civil Procedure Rules of this Court. Minimal proof doesn't mean no proof at all. It only means that the proof could fall below the usual standard required where the other party refutes or controverts the evidence of the claimant. See **LARMIE V. DATA PROCESSING MAINTENANCE & SERVICES LTD (SUPRA).**

Bare assertion of cost of ₦4,000,000.00 therefore cannot suffice under the circumstance. To this extent therefore, the relief sought for ₦4, 000,000.00 (Four Million Naira only) as cost of this suit hereby fails as nothing is before the court to merit the grant of same.

Consequently and in the final analysis, issue three is in the main resolved in favour of the plaintiff and suffice to say, the claim of the plaintiff succeeds in the most part and for the avoidance of doubt, order is hereby made as follows:

1. The claim for ₦4,000,000.00 (four million naira) cost of this action fails and is therefore dismissed.
2. The Plaintiff is hereby granted immediate possession of the premises known as No. 1 Salween Close, Maitama District, Abuja consisting of all that 6 bedroom detached house with 2 Bedroom guest chalet and 4 bedroom servants quarters, serviced with 22 air conditioners ('Demised Premises').

3. That the Defendant pays the plaintiff the sum of ₦108, 333, 333.33 (One Hundred and Eight Million, Three Hundred and Thirty Three Thousand, Three Hundred and Thirty Three Naira, Thirty Three Kobo only) being the outstanding balance before the determination of the said tenancy on 12th February 2019.
4. That the Defendant pays the plaintiff the Sum of ₦4,166,666.66 (Four Million, One Hundred and Sixty Six Thousand, Six Hundred and Sixty Six Naira, Sixty Six Kobo Only) monthly as mense profit accruing to the Plaintiff from 12th February 2019 when the tenancy of the demised premises legally determined until possession of the demised premises is delivered up by the Defendant.
5. That the Defendant pays the plaintiff the sum of 10% interest per annum on the Judgment sum until the same is fully liquidated.

Signed

Honourable Judge

APPEARANCES:

P.I.N Ikwueto SAN, H.K Eniotu and C.F Jideofor for Plaintiff

Victor Ubaka for defendant