IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE NYANYA JUDICIAL DIVISION
HOLDEN AT COURT 8, NYANYA ON THE 18TH DAY OF FEBRUARY, 2020

BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO: FCT/HC/ CV/272/12

COURT CLERK: JOSEPH BALAMI ISHAKU

BETWEEN:

TONY OGBULAFOR ESQ…….PLAINTIFF

AND

1. **UNIVERSITY OF BENIN**
2. **FEDERAL CAPITAL DEVELOPMENT AUTHORITY.**

..DEFENDANTS

JUDGMENT

The Claimant's Writ of Summons, Statement of Claim and all other Originating Processes is dated the 19th day of October 2012 which was further amended by an amended Writ of Summons dated the 1st day of April, 2014.

The Claimant claims against the Defendants as follows:

a. The sum of N3,850,000.00 from the 1st Defendant being the cost of the books the Claimant lost in the inferno of 6th November 2009 as a result of the reckless conduct of the 1st Defendant in setting its flat ablaze.

b. The sum of N940,000.00 being the cost of the various office equipment lost by the Claimant in the inferno of 6/11/09.

c. The sum of N632,722.00 being the money the Claimant paid to the 2nd Defendant as contravention charges for the action of the 1st Defendant in letting the residential flat to the Claimant for office purpose.

d. A declaration that the tenancy of the Claimant at Plot 23 Jos Street, Area 3 Garki, Abuja is still subsisting on the ground that the rent stopped running on 6/11/09 when the flat was gutted by fire and remained unrepaired until 23rd January 2012 and that time stopped running again between 23rd April 2012 and 30th of May 2012 when the 1st Defendant made the 2nd Defendant to seal off the flat of the Claimant while leaving that of the 1st Defendant open.

e. A declaration that it is unlawful for the 1st Defendant to attempt to use the 2nd Defendant to eject the Claimant from his chambers when his rent is still subsisting.

f. A declaration that the 2nd Defendant is wrong in charging the Claimant contravention charges when it is the 1st Defendant that let the flat to the Claimant for office accommodation in contravention of the planning regulation and that the

Claimant did not use the flat for the period covered by the contravention charges.

g. In the alternative, if the Claimant is subject to contravention charges that the charges paid for 2011 when the office was not in use be converted to payment for 2012 when the office was in use.

h. An Order restraining the 2nd Defendant from charging the Claimant contravention charges when it is the 1st Defendant who let the flat to the Claimant for office accommodation when they knew very well that the purpose of the building is residential and ought to charge the 1st Defendant for the contravention.

i. The sum of N50 Million as general damages for loss of use of the flat and psychological trauma.

j. N200,000.00 being the sum the 1st Defendant through its Senior Estate Officer Mrs. M.A. IGIEKHUME agreed to refund the Claimant out of the N500,000.00 the Claimant spent in renovating his office.

k. Cost of the Suit

The Defendants were served with the Originating Processes. The 1st Defendant filed its statement of defence which was subsequently amended vide its Amended Statement of Defence and Counterclaim dated and filed on the 26/05/14.

The 2nd Defendant's Statement of Defence is dated and filed on the 24/03/14 but filed on 26/03/14 and subsequently amended on 1/7/14.
The Claimant filed Claimant's reply to the 1st Defendant's Amended Statement of Defence and defence to Counterclaim on 3/07/14 while the Claimant's reply to 2nd Defendant's statement of defence is dated and filed on the 11/07/14.
The Claimant opened his case and gave evidence for himself. He is Tony Ogbulafor. He lives at Kuto Close Maitama. He is a Lawyer by profession with his office at Jos Street, Garki, Abuja. He made a Witness Statement on Oath on 1/04/14 and an Additional Witness Statement dated 3/7/15. He adopted them as his oral evidence.

In the 1st Witness Statement on Oath, he stated as follows:
That he applied for office accommodation in the Abuja Liaison Office of the 1st Defendant on 11/09/08.

That on 13/02/09, the 1st Defendant replied his letter formally offering him an office space at the 1st Defendant liaison office situate at 23 Jos Street, Area 3 Garki- Abuja.

That 1st Defendant's Senior Estate Officer Mrs. M.A. IGIEKHUME gave him approval to renovate the Office and forward his claims to her for approval provided the claim does not exceed N200,000.00.

He elected to renovate the office himself and be refunded the sum of N200,000.00 which the 1st Defendant's Senior Estate Officer said she has power to approve.

He carried out the necessary renovations in the office which costs him more that N500,000.00 but he gave the 1st Defendant a bill of N200,000 for her approval and refund which the 1st Defendant is yet to refund up till now despite his several demands.

The Liaison Office of the 1st Defendant which is located in the same floor as his office was gutted by fire on 5th November, 2009 which fire completely destroyed the office of the 1st Defendant and partly destroyed his own office.

That he could not use his office as a result of the fire incident and the 1st Defendant also stopped using their office.

That the fire incident was as a result of the recklessness of the staff of the 1st Defendant working at the Liaison Office.

That no Officer of the 1st Defendant commiserated with him over the fire incident and his loss. That as a result of the nonchalant attitude of the 1st Defendant, he wrote the 1st Defendant on 19/11/109 asking that his loss be incorporated in the insurance claim the 1st Defendant was to make or the 1st Defendant will bear the cost of his loss.

The books, computer equipment and Air conditioner lost amount to N940,000.00.

He did not make the claims for furniture and computers because he could not find the receipts immediately.

That on receipt of the letter, the 1st Defendant wrote him and backdated their letter stating that his tenancy will expire on 30/04/11 without reference to the fire incident and his loss.

That the building remained unattended to inspite of all pleas he made to the 1st Defendant to renovate the house so that he can reopen his chambers. He received a photocopy of a letter dated 2nd August 2010 from Goldman International Limited informing him that the said Company had been engaged by the 1st Defendant to carry out comprehensive works on the house including re rooting.

The Company commenced work on the building on 4/08/10 and continued at snail pace for over one year compelling him to write to the Company on 15/12/11 requesting to know when the renovation will be completed to enable him renew his operation in the office. The Company did not reply his letter under reference and the 1st Defendant did nothing to ensure that the renovation was completed. He was compelled to move back into the house to resume operation on 23/01/12 after the Christmas holidays.

That immediately he resumed his operations, the 2nd Defendant served him a letter dated January 25th , 2012 for contravention of land use and requested him to pay N632,722.00 for land use contravention.

He was surprised to receive the contravention letter as the whole house has always been used for office purposes which same purposes he rented it for.

He approached the Officers of the 1st Defendant who informed him that the 1st Defendant had applied to convert the house which was originally meant for residence to office accommodation but that they have not received the approval. The 1st Defendant's officials informed him that 1st Defendant was also charged about N1.8 Million for Contravention of Land Use.

On the 17/04/12, the 2nd Defendant sealed off his office and said the office will only be reopened when he pays the contravention fees charged on his flat but the 1st Defendant's Office was not sealed off.

Because he had not operated his chambers for over two years, he did not make sufficient money to pay the contravention fee and had to apply to the 2nd Defendant on 23/04/12 for instalmental payment. He paid more than half of the fee on 23/04/12 and his chambers was reopened on 30/05/12 despite the payment of more than half of the contravention fee on 23/04/12.

He later discovered that it was the Liaison Officer of the 1st Defendant by name Lucky Ikharo that colluded with another staff of the 2nd Defendant to orchestrate the sealing and continued sealing off of his chambers with a view of frustrating him out of his office illegally.

In July 2012, the said staff caused a letter to be written to him demanding that he should come and pay the outstanding balance of the contravention fee which said letter was addressed to a different address. The letter was received on his behalf by Lucky Ikharo. That till date Lucky Ikharo has not given him the letter.

That 2nd Defendant was written by Lucky Ikharo's Solicitor by name Zakari Garba claiming that the flat which he occupy was let to him as a residential accommodation but that he converted the said accommodation into office use without an approval of the 1st Defendant. He paid the balance of N229,722.00 to the 2nd Defendant with a letter still protesting the contravention charge on his chambers when he did not use the Chambers for the period he was charged for contravention. That his rent on the said office is still subsisting as the house was under renovation for long time and his rent was not running during the period he was not using the office for no fault of his. That the 1st Defendant is using the 2nd Defendant to eject him from his office accommodation illegally.

That he is entitled to his claims against the Defendants.

In Claimant's Witness Statement on Oath made pursuant to 1st Defendant's Amended Statement of Defence and Defence to Counterclaim

dated 3/07/14 which Claimant also adopted as his evidence, he stated inter alia;

That he is not holding on to the 1st Defendant's property at 23 Jos Street Area 3, Garki- Abuja as his tenancy in the said property is still running and subsisting and has not expired.

That the fire incident at the 1st Defendant's Liaison office Abuja on 6th November 2009 destroyed 1st Defendant's office and part of his office as could be garnered from his letter dated 19/01/09 to the 1st Defendant's Vice-Chancellor.

That 1st Defendant's staff was responsible for the fire incident which 1st Defendant deliberately attributed to power fluctuation from PHCN to escape liability.

That his request to be included in the insurance claim of the 1st Defendant was not made in bad faith and not calculated to defraud.

The reason for seeking accommodation in the 1st Defendant's property is to reduce cost of relocation and to make it easy for clients to reach him as he had stayed within the vicinity since 1991.

The 2nd Defendant also served him with charges for land contravention in respect of Plot 23 Jos Street, Area 3, Garki – Abuja on 25/01/12. He did not ask the 2nd Defendant to issue and serve him with land contravention charge.

That he did not in April 2012 or any other time willingly or voluntarily opt to pay any contravention levy nor lobbied the 2nd Defendant to share and serve the levy amongst the occupants to enable him make payment and never made any such demand via text message to Lucky Ikharo.

That he suggested to the officials of the 1st Defendant to share the contravention charge among the occupants of the four flats in the property but never got any concrete response from them but was surprised to receive a separate contravention charge from the 2nd Defendant on the same property. That he did not need to seek and obtain any permission from the 1st Defendant.

That 1st Defendant offered him a three bedroom flat specifically for use as office purpose only which he accepted accordingly.

That at all material times, the 1st Defendant has been using the property in question as a commercial guest house and also let out other flats to tenants for use as offices.

He refers to 1st Defendant's letter dated 13/02/09.

That it is not true that his rent expired since 30/04/11.

That his tenancy is still running and subsisting hence he is still in possession of same and lawfully too.

That his inability to use his office was not concocted nor self inflicted but solely because of the fire incident occasioned by 1st Defendant's staff which completely destroyed the 1st Defendant's Liaison Office and part of his which led to the disorganization of his work and non use of his office. He denied that the fire incident frustrated the landlord/tenant relationship between the 1st Defendant and him as the same occurred by the negligence of 1st Defendant's staff.

That he is not perpetuating illegality by his claims. He denied holding on to the 1st Defendant's property nor depriving it of any legal right of enjoyment.

He stated that the notices were null and void and that he is not being recalcitrant as his rent is still subsisting.

That 1st Defendant does not need the apartment for any personal use of their staff nor in compliance with any term of grant against any present use but wants to eject him out of the property in order to put new tenants who will pay a higher rent. That his continuous stay in the apartment does not negatively affect the core mandate of the 1st Defendant.

He maintains that his rent is yet to expire and the issue of payment of further rent or renewal of rent does not arise in the circumstance.

That the fact of the application for change of use was not disclosed to him at the time of the contract or from onset. He is not liable to the 1st Defendant's Counter claim.

Under Cross-examination by 1st Defendant's Counsel, the witness answered as follows:

He applied for an office space of the 1st Defendant's liaison office.

To a question, he said the space was vacant for over five years before he applied. Having read paragraph 3 of Exhibit A, he said it was not vacant. That the former occupant of the space was his friend. That he visited Dele Oye on the property before he rented it.

To another question, he answered that he did not know the nature of the property before he rented it. He does not have a particular number of signatures. That by paragraph 26 of the Amended pleadings, he knew the property was subject to contravention when he was served with Contravention Notice in 2012.

He applied to use the accommodation as office in 2008 and they approved. He was surprised when 1st Defendant turned around in 2010.

To another question, he answered that the Vice Chancellor came to his office and drew his attention to the letter. He became aware of the

contravention in 2012. That by the time he got Exhibit F, the place had been destroyed by fire.

To another question, he answered that it is not true that he was served with a Quit Notice in 2010 after the 1st Defendant was served with a Contravention Notice.

He answered that Exhibit F is a Quit Notice. That he suggested to the V.C. that the contravention sum be shared by the tenants if that is the problem. The content of Exhibit K which contains his suggestion to the V.C. is a suggestion which was not accepted.

He answered that the contravention fee he paid was directed to him by the 2nd Defendant because when he refused to pay, they sealed up his office.

It was a bill of N632, 722. The property was gutted by fire and his office was affected.

He did not take photographs of the burnt office, books, chairs, desktop.

That on the day of the fire, he was in the office.

That four fire trucks were in the building trying to put off the fire.

He said he was given approval to renovate the property. He does not have evidence of the state of the flat before he applied for renovation.

That the approval was by I.A. Igekume.

That till today the 1st Defendant has not presented to him a tenancy agreement for execution.

To another question, he answered that he did not use the property after it was gutted by fire. He eventually moved into the property in 2012.

He took possession on 1st May 2009 – 2011 originally. He answered that the fire incident frustrated that contract. That his rent did not expire in 2011.

To a further question, he answered that he applied to pay the contravention fee twice. That he did not need the consent of the 1st Defendant to pay the contravention bill as it was addressed to him.

That it is not true that by 2014 he had completed another 2 years. He is not occupying the office illegally.

Upon being cross-examined by 2nd Defendant, he answered that:

He admitted being served with the contravention letter sometime in February 2012.

The house was gutted by fire on 5/11/09

He stopped using the office January 2012. There was full commercial activity going on. He presumed it was a commercial building which was approved.

To a question, he answered that his office was the only office sealed.

That the designation of the officer that connived with Lucky is Head Enforcement. He is not aware that 2nd Defendant was carrying out their lawful duty.

His problem with 2nd Defendant is that he did not know that the 1st Defendant's office is for residential. He does not know the business of the 2nd Defendant in that respect.

He is also not aware that 2nd Defendant gave letters to only those in contravention of land use.

He answered that since he entered the premises, he has not been aware of any contravention.

To a question, he answered that when he complained about the closure of his office, they told him that they applied for change of use from residential to commercial but had not received approval.

He was only interested in opening his office. He was told by Lucky that it was almost concluding the issue of change of land use and that they are waiting for the V.C. to provide funds.

To another question, he answered that he is a lawyer of about 30 years in practice.

He does not agree that he is in contravention of the law.

The Claimant tendered the following documents.

Exhibit A – Letter dated 11/09/08 addressed to V.C. 1st Defendant titled ***'Request for office accommodation'***.

Exhibit B - Letter from 1st Defendant to the Claimant dated 13/02/09 titled ***'Letter of Offer.'***

Exhibit C – Letter from Claimant to V.C. of 1st Defendant dated 19/11/09.

Exhibit D – D1 – Receipts from Roberto Bookstores Ltd to Claimant dated 3/02/09 and Rowmark Bookstores dated 11/09/08.

Exhibit E – E3 – 4 receipts of items lost in the inferno.

Exhibit F – Letter dated 30/10/10 by 1st Defendant to Claimant titled ***'Quit Notice.'***

Exhibit G – Copy of letter from Goldman Int. Ltd dated 2/08/10 titled ***'Notice for Renovation of Liaison Office Building.'***

Exhibit H-Letter from Claimant dated 15/12/11 to M.D. Goldman.

Exhibit 1 & 1_1 - Letter dated 23/01/12 by Claimant to the Director of Department of Development Control titled ***'Undertaking to pay Contravention Fees by Installment and Receipt of 2nd Defendant.'***

Exhibits J and J1 – Letter dated 3/08/12 from Claimant to Director, Department of Development Control and Receipt from 2nd Defendant.

He orally urges the Court to give judgment in his favour.

Exhibit K – Letter dated 6/3/12 by witness to V.C. of 1st Defendant.

Exhibit L - 1st Defendant's letter to witness dated 18/11/09.

The above letters were tendered through the witness during cross-examination.

The above is the case of the Claimant.

The defence opened and called five witnesses.

The 1st Defence Witness is Lucky Ikharo. He states orally that he lives at No. 43 Cynthia Mamman Close, Off Layout Street, Abacha Road, Mararaba, Nasarawa State.

He remembers making two Statements on Oath.

He adopts the Witness Statement on Oath dated 26/05/14.

He states that the Claimant via a letter dated the 11th day of September 2008 applied for an office space at the 1st Defendant's property at No. 23 Jos Street, Area 3, Garki, Abuja.

The Claimant was on the 13/02/09 offered a three bedroom flat at No. 23 Jos Street, Area 3, Garki and the Claimant took possession.

The 1st Defendant property was gutted by fire on the 6th day of November 2009 destroying some of the 1st Defendant's valuable.

That none of the 1st Defendant's staffs caused or was even indicted or held to be reckless or negligent over the fire incident that engulfed the 1st Defendant's property.

That the Claimant is in the property against the will of the 1st Defendant after the Claimant's rent expired in 2011.

That 1st Defendant's mandate also include raising funds through its properties for the realization of its primary mandate of providing education.

That the 1st Defendant did not agree to renovate the property or pay for its renovation when done by the Claimant. That 1st Defendant never gave its approval to the Claimant to renovate the property moreso when the 1st Defendant keeps its property in tenantable condition and was not aware the Claimant could not use the property nor receive any complaint or demand from the Claimant for a purported work done.

The fire incident that gutted the 1st Defendant's property located on the same floor with the Claimant's office did not completely destroy the 1st Defendant's office but partly affected same as his office was not affected by the said fire which also did not affect the Claimant's/wing/block which is beside and or behind the 1st Defendant's office.

It did not prevent the Claimant from using his office as can be seen from the picture taken on the day of the fire incident.

That the cause of the fire was purely that of an electric fault occasioned by PHCN and not due to the alleged recklessness of the 1st Defendant's staff.

That various eye witnesses account and independent report on the incident attested to the fact that fire was caused by power fluctuation in quick succession by PHCN. That Nations Newspaper of Saturday November 7, 2009 reported the fire incident on page 7 of its newspaper and the cause. That the Claimant's purported request to the 1st Defendant to include the Claimant in an insurance Claim was done in bad faith and same calculated to defraud as there is no way the 1st Defendant could include the Claimant in an insurance claim over the property for which Claimant is not entitled. That 1st Defendant was not reckless and callous in its conduct as regard the fire accident neither was the Claimant prevented from using his office and it's not true that the work at the building commenced and continued at snails speed and that the 1stDefendant did not do anything. That it was the 1st Defendant that was actually served a contravention charge for land use.

That it was the Claimant who in April 2012 willingly and voluntarily opted to pay the contravention levy and lobbied the 2nd Defendant to share the levy amongst the occupants and to issue and serve his share on him personally so as to enable him make payment. That Claimant is not entitled to any refund as it is self inflicted. That contravention notice for land use are served on the owner of property who had contravened the land use and not on tenant. The 1st Defendant is not liable to make a refund to the Claimant having not sought and obtained permission from the 1st Defendant to pay the levy. That Claimant was not deceived into renting the 1st Defendant's property. He was aware of the very nature and state of the 1stDefendant's property and not a novice as he was a constant visitor and lived as a neighbor to the property and perfectly understood what he was up to before he made the offer that culminated into his renting and moving into possession.

That the tenancy of the Claimant in 1st Defendant's property if any has since expired on the 30/04/11 and same terminated by a valid Notice dated the 30/10/10 which was issued and served on the Claimant by the 1st Defendant. That the Claimant is illegally holding on to the property as tenant at sufferance. That after the Claimant's rent expired on the 30th day of April 2011, the 1st Defendant refused to further review

the Claimant's rent in view of the 1st Defendant's inability to secure the change of land use from residential to commercial use. That in compliance with the 2nd Defendant's directive, since the 1st Defendant was unable to obtain the approval for commercial use of the land, the 1st Defendant on various occasions issued and served on the Claimant Quit Notice and Notice to Tenant of Owners Invention to Recover Possession. The Claimant has vehemently refused to accept to give up peaceful possession. That Claimant's alleged inability to use its office space was concocted and if any self inflicted as the fire incident never prevented the Claimant from using its office space as he eventually did.

The unfortunate fire incident even if it prevented the Claimant from using his office would amount to frustration and the 1st Defendant cannot be held liable. The 2nd Defendant to the knowledge of the Claimant, has issued and served a land use contravention notice on the 1st Defendant in 2009 while processing an approval for commercial use of the property. That the 1st Defendant having not been able

to obtain the consent and approval for the property, has resolved to revert to the use of grant being residential and for the personal use of

staffs. That Claimant waited for 5 months before replying 1st Defendant letter vide a letter dated 6/03/12. That Claimant is not entitled to the relief. That 1st Defendant on a second occasion issued and served on the Claimant a Quit Notice dated 22/10/12 through its Solicitors Zacks Garuba & Co which said Notice has since expired. Claimant is recalcitrant, refusing to give up possession.

A seven days' notice to tenant of owners intention to recover possession was also served on the Claimant. Despite the above, the Claimant continued in occupation. The 1st Defendant requires the apartment for personal use and in compliance with the term of grant as against its present use. That Claimant continued occupation is affecting the term of the grant. That Claimant's rent expired on the 30th day of April 2011 and no further rent or renewal of rent has been done by the Claimant. That the Claimant made an offer to the 1st Defendant which 1st Defendant accepted while processing the conversion of the use of the property from residential to commercial use from the 2nd Defendant. The Defence Witness No.1 tendered the following Exhibits:
Exhibit M – letter from Abuja Metropolitan Management Council dated 25 January 2012 titled ***"Charges for Land Use contravention".***

Exhibit N – Letter from Claimant addressed to V C of the 1st Defendant dated 6/03/12.

Exhibit O – Letter from Claimant to the 1st Defendant dated 11/09/08.

Exhibit P – Quit Notice dated 30/10/10.

Exhibit Q – Another Quit Notice from the office of Zacks Garuba & Co. dated 22/10/12

Exhibit R –7 days Notice to Tenant of Owners Intention to Recover Possession dated 17/05/13.

He wants the Court to dismiss the Claim and give Judgment in favour of the 1st Defendant.

Under Cross-examination by the Claimant's Counsel, he answered as follows. He cannot remember what and what was recovered from his office but he knows the T. V, Filing cabinet, fridge, A/C, small generating set etc. To a question he answered that the fire destroyed about 70% of their properties. He cannot remember the name of the contractor that was not engaged. A contractor was engaged and he changed the roof of the building. He also changed windows. He answered that 1st Defendant painted the whole house so that the place can look uniform. To a question he answered that his office was burnt and it was not possible to use it. He further answered that he

does not know who caused the burning of the building. He does not know if the building was under insurance cover. To another question, he answered that there was no need for the 1st Defendant to write a letter to Claimant commiserating with him. He is not aware if the application for change of land use has been approved. He answered that they are all victims of the act of the 2nd Defendant. That the entire building was sealed by the 2nd Defendant. He answered that he is sure there was no report from the fire service. That he is not aware of any letter apart from the contravention letter Exhibit M. The 1st Defendant did not write to the Police that Claimant was using the office for illegal purposes. They do not use the premises as Study Centre for students. He is not aware of a letter to the effect that 1st Defendant has not obtained approval to use the place as a commercial premises.

To another question, he said he cannot remember when the Quit Notice dated 30/10/10 was served. He said after the fire incident nothing happened to the flat. That he entered the flat severally. He now answered that 1st Defendant wrote to the Police because Claimant's neighbours let their flat to ladies. The Claimant was not disturbing him. He did not know why the Police involved the Claimant.

Under re-examination he answered that he building was re roofed because the roof of a particular flat was affected and whole roof has to be changed for uniformity. He clarified that it was the flat occupied by the University.

Under Cross-examination by 2nd Defendant's Counsel, he answered that he started working with 1st Defendant since 2002. He became aware of this matter when he received the Summons. He does not know when 1st Defendant wrote for a change of use of the building. He is not the person who offered the place to the Claimant. He came on transfer and met the Claimant. He did not know when the Claimant was given a letter. All he knows is that there was a fire incident in 2009 and thereafter they received a contravention notice. The management concluded that the 1st Defendant cannot continue to pay the amount every year even when the application for change of land use was pending. The 1st Defendant told the tenants to go.

To a question, he answered that the cause of the fire outbreak is electrical fault i.e power surge which emanated from flat 4 which is the flat occupied by the University. It does not use the same NEPA line. He answered that he was surprised when they got the contravention

notice. He is aware 2nd Defendant is carrying out their lawful duties. At the time the letter came, they were using the flat for residential. It was used to receive their guest that were coming to Abuja. That 1st Defendant was in contravention of land use. To another question, he answered that 1st Defendant gave Claimant permission to occupy the space.

DW2 is Hussain Dalhat. He is of No. 2 Juba Street, Development Control Office, Wuse Zone 6, Abuja. He is the Chief Estate Officer. He remembers deposing to a Witness Statement on Oath on 8/05/17. He adopts same as his oral testimony in this case. He is an Assistant Chief Estate Officer in the Department of Land Administration of the 2nd Defendant.

The 2nd Defendant is saddled with the responsibility of supervising and monitoring implementation of the National Physical Development Plan and Development Control. That the subject matter in this Suit, No. 23 Jos Street, Area 3 Garki is marked for residential purposes. That Claimant commenced commercial activities which changed the character of the listed building thereby contravening the provisions of a planning regulation of the Department of Development Control.

In view of the above and in order to ensure compliance with the Abuja Master Plan, the Department of Development Control issued the Claimant the bill of N632,722.00 being contravention charges for the violation. The contravention charges was issued to the Claimant because he was and still is the one in violation of the stipulated regulation and it is not aware of any arrangement or agreement between the Claimant and the 1st Defendant. That Claimant is not entitled to any of the reliefs claimed against the 2nd Defendant in the Statement of claim. That the Claimant Suit should be dismissed.

Under cross-examination by the Claimant, he answered as follows: he does not know the Claimant. That notice was served on the person in physical occupation. That the Notice was a land use contravention. That it could be multiple contraventions. That legal services rendered by Claimant is commercial activities. That the property is for residential and not commercial. That it was converted to commercial use without any approval. That the land use of the property has not been changed.

On being cross-examined by the 1st Defendant's Counsel, he answered that He maintained that contravention notice is served on the

occupant. The amount of the bill depends on the size of the area. That 1st Defendant also has a sign board as a Liaison Office. The contravention notice was served the same date. To a question, he answered that the Claimant did not approach him. The above is the case of the Defence.

The 1st Defendant adopted its Final Written Address dated and filed on 11/07/18 as his final oral argument. He posited two issues for determination:

1. Whether from the Pleadings and totality of evidence, the Claimant is entitled to the reliefs claimed against the 1st Defendant
2. Whether the 1st Defendant is not entitled to the reliefs claimed against the Claimant.

On the 1st issue, it canvasses that the Claimant is not entitled to the reliefs sought. That the Claimant failed to prove that the inferno of 6/11/09 was as a result of the reckless conduct of the 1st Defendant. The Claimant also failed to prove that it was the 1st Defendant or its staff that set the property on fire. Learned Counsel to the 1st Defendant further canvasses that whosoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which

he asserts must prove that those facts exist. He submits that mere occurrence of an accident is not proof of negligence. The extent, nature of the accident must be pleaded. That the Claimant failed to prove its assertion that the 1st Defendant was reckless or its staff set his flat ablaze. Learned Counsel further submits that Claimant's claim that the lost books and office equipment is not proved in evidence. That Exhibits D, D1, E – E3 are documents made for the purpose of this case. He submits that the sealing off of the Claimant's office on 17/04/12 by the 2nd Defendant is an illegality. He refers to Section 27(2) & (3) of the Nigeria Urban and Regional Planning Act. That there is privity of contract between the Claimant and 2nd Defendant. That there is no evidence of work done.

On issue 2, Learned Counsel contends that a Counterclaim is a separate and distinct action. That the failure of the Claimant to relinquish and deliver up vacant possession of the 3 bedroom flat apartment amounts to the Claimant being recalcitrant and illegally holding on the property. That 1st Defendant complied with Sections 7, 8 and 9 of the Recovery of Premises Act. That all the requisite notices are before the Court. That the evidence of the 1stDefendant was not denied or controverted by the Claimant.

Learned Counsel to the 1st Defendant further contends that the only money paid for rent by the Claimant was in 2009 for two years which expired on 30/04/11. That Claimant has remained in the property since 1st of May 2011 till date without payment or renewal of rent for the three bedroom flat apartment. He urges the Court to hold that the 1st Defendant is entitled to payment of

mesne profit from the Claimant at the rate of
N1 Million per annum till Judgment is delivered. That the Claimant failed to prove its assertion that his rent still subsists. That failure to pay rent as and when due without any reasonable explanation for such default entitles the landlord to seek to recover possession. The Claimant's Defence is not sustainable. He contends that the 1st Defendant has proved its Counterclaim against the Claimant as prescribed by law.

The 2nd Defendant's Written Address is dated 27/11/18. He adopted same as his Final Written Argument. He raised two issues for determination:

1. Whether Claimant has a reasonable cause of action against the 2nd Defendant.
2. Whether on the preponderance of evidence, the Claimant is entitled to any reliefs in this Suit.

On the 1st issue, Learned Counsel to the 2nd Defendant submits that the Claimant's case is a case of negligence against the 1st Defendant. The 2nd Defendant he canvasses is not a party to the tenancy relationship that led to the purported injury suffered by the Claimant. That it is the responsibility of the 2nd Defendant to ensure strict adherence to the land use of each plot allocated to it and the strict compliance with the Urban and Regional Planning laws. Refersto Section 1, Federal Capital Territory change of use and Residential Density Regulations 2008, Federal Republic of Nigeria official Gazette Vol. 98. The 2nd Defendant was carrying out its statutory function. The Claimant has failed to establish the wrong committed by the 2nd Defendant that has caused him damages.

On issue 2, he canvasses that the case is that of negligence. That the Claimant has not by evidence shown that he is entitled to the reliefs sought. That the Claimant is not entitled to any of the reliefs against 2nd

Defendant. That he failed to establish that the 2nd Defendant owed him a duty of care and that the said duty of care was breached. That the Claimant cannot benefit from his unlawful act. That Claimant is using the property illegally for commercial purposes. Learned Counsel to the 2nd Defendant finally urges the Court to dismiss the Claimant's Claim for lack of merit.

The Claimant's Final Written Address is dated 24/10/18 but filed on the 25/10/18. Learned Counsel to the Claimant adopted same as his final oral argument. I have gone through the issues for determination. They can be summarized into two as the 1st Defendants issues:

1. Whether the Claimant has proved his case.
2. Whether or not the 1st Defendant/Counterclaimant has proved its Counterclaim against the Claimant/Defendant to Counterclaim.

I have read the evidence and considered the Written Addresses of Counsel. The issues for determination in my view are:

1. Whether from the totality of Pleadings and evidence, the Claimant is entitled to the reliefs claimed against the 1st and 2nd Defendants.

2. Whether from the evidence before the Court, the 1st Defendant has not proved its Counterclaim against the Claimant so as to entitle him to the reliefs sought.

I have earlier copiously reproduced the evidence of parties. The Claimant is the tenant of the 1st Defendant in respect of a three bedroom flat. The application for office accommodation is Exhibit A. The 1st Defendant's offer in respect of flat 3 is Exhibit B. It states:

"We wish to refer to your letter O&C/ABJ/ADM/006/VOL.V/515 dated 11th September, 2008 to the Vice Chancellor requesting to be offered the above flat at No. 23 Jos Street, Area 3, Garki Abuja under the following conditions:

1. ***The rent shall be N1 Million per annum two years payable in advance.***
2. ***The 3 bedroom flat shall be used for office purpose only.***
3. ***Electricity bills and water rate shall be paid on a monthly basis and receipts shown to the landlord's Liaison Officer.***
4. ***Other 'tenants' covenant shall be contained in the tenancy agreement to be drawn up and signed by parties later***
5. ***You shall pay rent of N2 Million in advance for the first two years."***

The letter is dated 13th day of February 2009.

The Claimant gave evidence that he renovated the place upon an agreement of a refund of N200,000 which 1st Defendant denied. On the 6th of November 2009, the building was gutted by fire which completely destroyed the 1st Defendant office and partly affected the Claimant's Chambers. The Claimants Pleading and evidence is that the Claimant could not use its office as a result of the fire incident which the 1st Defendant denied. That the fire incident was as a result of the recklessness of the staff of the 1st Defendant working in the Liason Office. That he lost books worth N3,850,000 while the furniture and computers are worth N940,000.

In ***DORTMUND COMPANY (NIG.) LTD & ANO V. ELIAS (2013) LPELR – 21117,*** the Court of Appeal defined negligence as the omission or failure to do something which a reasonable man under similar circumstances would do or the something which a reasonable man would not do. The mere occurrence of accident is not a proof of negligence. There is no doubt that what the Claimant is alleging is that the fire outbreak is as result of the negligent act of the Defendants staffs

In ***A.B.C (TRANSPORT CO.) LTD VS. OMOTOYE (2019) LPELR – 47829 SC.***

The Supreme Court held that the burden of proof of negligence falls on the Plaintiff who alleges negligence. This is because negligence is a question of facts and it is the duty of he who asserts must prove it.

In a case of negligence the facts which gave rise to the negligence must be comprehensively and delicately pleaded. The facts must be pleaded in minute details almost to the letters of the alphabet. Aside the above, the law is that failure to prove particulars of negligence pleaded will be fatal to the case of the Claimant.

See ***ABUBABAR & ANOR. VS. JOSEPH & ANOR. (2008) LPELR 48 SC.***

I have gone through the Claimant's Amended Statement of Claim and the evidence of PW1. The Claimant did not plead any particulars of negligence which gave rise to the negligence, consequently, no evidence of negligence on the part of the 1st Defendant's Staff was availed the Court. Failure to put before the Court how the 1st Defendant's staff became negligent culminating into the fire incident is not in evidence. Mere assertion that the 1st Defendant's Staffs are negligent cannot amount to proof of negligence. It only amount to the cry of a wolf. Negligence is the tort that protects a person from careless action from another that can injure him. The law places a duty

of care on various persons in various circumstances, where such a person breaches the duty of care placed upon him by law and that breach results in injury to the person to whom such duty is owed, the bearer of the duty is said to have been negligent and will be liable in damages to repair the injury caused.

See ***ODULATE VS. FIRST BANK (2019) LPELR – 47353***

HAMZA VS. KURE (2010) LPELR – 1351 SC.

The Claimant has not shown the duty of care owed him by the 1st Defendant and if there is any, how that duty was breached. The Claimant in his Written Address tried to distinguish negligence from recklessness. The difference in my view is in semantics. It is 10 kobo and 10 pence amounting to the same thing. The Claimant has therefore failed to prove Claim 1 & 2 on the preponderance of evidence.

The Claimant further claims N632,722.00 being the money Claimant paid to the 2nd Defendant as Contravention charges in that 1st Defendant let the residence to the Claimant for office purposes. Exhibit B contains the terms of the Tenancy agreement as no formal Tenancy agreement was executed. It clearly states that the 3 bedroom flat shall be used for office purpose only.

The intention of the 1st Defendant and the Claimant is that the three bedroom flat let by the Claimant from the 1st Defendant was for office accommodation.

Under cross examination the 1st Defendant's witness answered that he is aware 2nd Defendant was carrying out its lawful duties. That at the time, the contravention notice came, it was using their flat for residential. It was used to receive their guests that were coming to Abuja. That an application for change of land use was pending. He further admitted under cross examination that they were in contravention of land use. The evidence of DW 2 is that the property is for residential and not for commercial. That it was converted to commercial use without approval.

From the evidence before me, the 1st Defendant knowing fully well that the land use is residential rented out the said flat for office use without waiting for approval on their application for change in land use. Exhibit J and J1 and Exhibits I and I_1 are evidence of the Claimant's payment of the contravention charges.

In the circumstance, the cost incurred by the Claimant ought to be borne by the 1st Defendant. Claim C therefore succeeds.

On relief (d) the Claimant's claim is that his tenancy is still subsisting on the ground that the rent stopped running on 6/11/09 when the flat was gutted by fire and remained unrepaired until 23/01/12 and that time stopped running again between 23rd April 2012 and 30th May 2012 when the 1st Defendant procured the 2nd Defendant to seal off the flat of the Claimant while leaving that of the 1st Defendant. The Claimant has not put materials before me to suggest that the parties are ad idem on the cessation of tenancy or resuscitation of same for whatever reason whatsoever.

By Exhibit B, the rent shall be N1 Million per annum, two years payable in advance. What this means is that the rent is for two years renewable at the expiration of rent. The evidence of Claimant that the 3 bedroom flat the subject matter of this suit which is also located on the same floor as the office of the Claimant was gutted by fire on the 6th November 2009 and that the fire completely destroyed the office of the 1st Defendant and partly destroyed the office of the Claimant.

The Claimant further stated that the building remained unattended to in spite of the plea of the Claimant to the 1st Defendant to renovate the house so that the Claimant can reopen his Chambers. That Goldman International Company was engaged by 1st Defendant to carry out comprehensive work on the house including re-roofing the house. The company commenced work on the building on 4/08/10 and continued at a snail speed for over a year thereby compelling the Claimant to write to the company on 15/12/11 requesting to know when renovation will be completed to enable the Claimant renew his operations in the office. That from 6th November 2009 to 23rd July 2012 he was prevented from using his office as a result of the recklessness and callous conduct of the 1st Defendant. He was compelled to move back to the house on 23/01/12 after the Christmas holidays.

The evidence of the 1st Defendant on the other hand is that on 13/02/09, the Claimant wrote an application or request for an office space which led to the 1st Defendant offering the said flat 3 (3 bedroom accommodation) at No. 23 Jos Street, Area 3, Garki for let (See Exhibit B). The Claimant accepted same and took possession for two years. That property in question was gutted by fire on the 6th day of November 2009. That the Claimant rent expired in 2011. That the Claimant was not affected by the said fire. The fire also did not prevent

the Claimant from using his office. From the evidence and exhibits before me, I find that the Claimant rent started running from the 13th day of February 2009. It is for two years. The rent expired on the 13th day of February 2011. The fire gutted the premises sometimes on the 6th of November 2009. That the fire affected the Claimant's office and disrupted the operation of his Chambers.

Under cross-examination the Claimant (PW1) said, the fire incident frustrated the contract. He could not use the property after it was gutted by fire. He moved into the property in 2011.

Frustration is the premature determination of an agreement between parties lawfully entered into and which is in the course of operation at the time of its premature determination, owing to the occurrence of an intervening event or change of circumstances so fundamental as to be regarded by law both as striking at the root of the agreement and as entirely beyond what was contemplated by the parties when they entered into the agreement.

See ***W.B.C.I. VS. STANDARD (NIG) ENG. CO. LTD (2002) 8 NWLR (PT.768) 104 CA.***

Frustration occurs whenever the law recognizes that without default of either party, a contractual obligation has become incapable of being performed because the circumstances in which performance is called for would render it radically different from what was undertaken by the contract.

See ***ARANMU VS. OLUGBODE (2001) 13 WRN 132.***

DAVIS CONTRACTORS LTD. VS. FARHAM D.C. 1956 A.C. 696.

The following situations or events have been held by the Courts at one time or the other to constitute frustrating events i.e, subsequent legal changes, outbreak of war, destruction of the subject matter of the contract, government requisition of the subject matter of the contract and the cancellation of an expected event.

See ***OBAYUWANA VS. THE GOVERNOR OF BENDEL STATE (1982) SJSC P.167.***

The subject matter in this case is the flat which was engulfed by fire.

It could no longer be used. The Claimant said he was prevented from using it from 6th November 2009 to 23rd July 2012 as a result of the untenantable condition of the partly burnt flat within which period the two years' rent expired.

Surprisingly none of the parties raised it, in their Final Addresses.

However, the rule is that it is not for the parties but for the Court to state whether and when frustration has occurred, and the Court has the power to determine the existence of frustration even where the parties have showed otherwise.

See ***DENNY MOTT & DICKISON VS. JAMES B. FRASER & CO. LTD. (1944) A.C. 265.***

In my humble view, the tenancy agreement was frustrated as soon as fire gutted the 1st Defendant's premises and it was no longer possible for the Claimant to continue in occupation.

At that point, the Claimant would have been entitled to his rent but the evidence is that he resumed back into possession and became a tenant at will.

On the otherhand, I have also gone through Exhibits E, E1, E2, E3, D and D1.

They are very neat. They look like receipts procured for the purpose of this case. They are not credible. I shall not place any reliance on them.

By Section 3 of the Federal Capital Territory Act, the 2nd Defendant was created.

By Section 4, its functions are spelt out which includes the preparation of a master plan for the capital city and of land use with respect to town and country planning within the rest of the Capital Territory.

The provision of municipal service within the Federal Capital Territory.

To exercise such other powers as are necessary or expedient for giving such effect to the provisions of this Act.

Section 14 of the Act empowers the President to make regulations generally for carrying into effect the provisions of the Act. The Federal Capital Territory Change of Land Use and Residential Density Regulations 2008, Gazette Vol. 98 states that ***"any owner of a developed property in the FCT who wishes to apply for change of land use and or density shall follow certain procedure."***

There is no evidence that the 1st Defendant followed that procedure yet in contravention, let out its property to the Claimant against the intendment of the law. The Claimant is in occupation. The 2nd Defendant was therefore performing its statutory responsibility and was not being used to evict the Claimant.

The Claimant also seeks for N200,000 being the sum the 1st Defendant through its Senior Estate Officer Mrs. M.A. Igiekhume agreed to refund the Claimant out of the N500,000 the Claimant spent in renovating the office.

There is no evidence in support of this claim aside the bare claim. It is not therefore proved.

For the totality of reasons given, Claims (a), (b), (d), (e) (f) (e) (h) (i) (j) and (k) fail and they are dismissed.

However, Claim (c) succeeds.

Judgment is therefore entered in favour of the Claimant against the 1st Defendant for the sum of N632,722.00 being the money the Claimant paid to the 2nd Defendant as contravention charges.

The 1st Defendant filed a Counterclaim seeking for the reliefs:

1. A declaration that the Tenancy arrangement between the Claimant and the 1st Defendant having expired by effluxion of time or by a valid Notice for possession served on the Claimant by the 1st Defendant terminated the landlord and tenant relationship.
2. An Other for possession of the 3 bedroom flat occupied by the Claimant
3. An Order directing he Claimant to pay 1st Defendant the sum of N3 Million only as arrears of rent for a period of three years between 2012, 2013 and 2014 respectively.
4. Mesne profit by the Claimant from the date of the institution of this Suit until possession is given up.
5. N1.5 Million only as damages and cost of legal fees.

I have earlier summarized the evidence of parties in this Suit, I shall not therefore repeat.

In respect of relief (1), the court has held that the tenancy of the Claimant with the 1st Defendant was frustrated.

In the circumstance prayer (I) cannot be granted.

In prayer 3, the 1st Defendant Claims N3 Million only as arrears of rent for three years from 2012, 2013 and 2014. The evidence and finding of the Court is that the Claimant despite the frustration of the relationship was holding over.

The evidence of the 1st Defendant in this regard is that the Claimant is illegally holding unto the property as tenant of sufferance.

That Claimant rent expired on 30/04/11.

That 1st Defendant refused to further renew the claimant's rent in view of the 1st Defendant's inability to secure the change of land use from residential use to commercial.

The 1st Defendant on various occasions issued and served on the Claimant Quit Notices and Notice to Tenant of Owner's Intention to Recover Possession but Claimant vehemently refused to give up possession.

That the unfortunate fire incident if it prevented the Claimant from using his office amount to frustration and the 1st Defendant cannot be held liable.

The evidence of PW1 is that from the 6th of November 2009 to 23rd of July 2012, he was prevented from using his office which he attributed to the callousness of the 1st Defendant. He was compelled to move back on 23/01/12. That for the initial period of the two years of his tenancy from 2009 – 2011 he could not operate in his chambers.

The evidence is that he paid N2 Million.

It is only fair that the 1st Defendant reimbursed the Claimant but failed to do so.

The Claimant held on from 2012, 2013 and 2014.

The Claimant spent three years in possession and is still in possession. Even if the Claimant's initial N2 Million paid for 2009 – 2011 is used to substitute 2012 – 2014, that rent would expire in April 2014. The evidence is that he is still in holding over. The Defendant claims Mesne profit but did not claim any rate in relief (4). It is vague, non specific and not grantable.

The tenancy was frustrated. Mesne profit cannot be claimed. The Claimant became a tenant at will. He can only pay for use and occupation. Mesne profit is the intermediate pecuniary value on the

premises between the time the tenancy terminates and when the tenant yields up possession.

Relief (4) for mesne profit from the institution of the action till Judgment therefore fails.

By Section 8(1) of the Recovery of Premises Act, Cap 544, the Claimant is entitled to a week's Notice. Exhibit 'Q' is a 6 months Quit Notice dated 22/10/12 served on the Claimant by the 1st Defendant.

Exhibit 'R' is a 7 days Notice dated 17/05/13.

The 1st Defendant's evidence is that the 3 bedroom is needed for a personal use and to correct the illegal use the property is being put.

1st Defendant did not give evidence of damages and cost of legal fees as contained in relief 5. It fails.

Relief 6 is against the avalanche of evidence that the Claimant's apartment was gutted by fire.

The 1st Defendant shall therefore bear its loss. Relief 6 also fails.

For the totality of reasons given, Judgment is however entered in the 1st Defendant's Counterclaim against the Claimant as follows:

1. The Claimant shall yield up possession of the three bedroom flat lying and situate at No. 23 Jos Street, Area 3, Garki Abuja on or before the 30th day of May 2020.

2. The Claimant shall pay to the 1st Defendant the sum of N84,000 per month for use and occupation from the 30/04/14 until possession is finally given up.

……..
HON. JUSTICE U.P. KEKEMEKE
(HON. JUDGE)
18/2/20.