

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT APO-ABUJA

ON THE 27TH DAY OF FEBRUARY 2020

BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI

PRESIDING JUDGE

SUIT NO: FCT\HC\CV\1194\16

BETWEEN:

ASSET MANAGEMENT CORPORATION OF NIGERIA (AMCON) PLAINTIFF

AND

BGL PLC

.....

DEFENDANT

PARTIES ABSENT.

OSEGBO STANLEY FOR PLAINTIFF.

JUDGMENT

By a writ of summon filed on 9th March 2016. The Plaintiff claims from the Defendant as follows:

“i. Immediate possession of the 2nd floor of the AANI Building; plot 417 Tigris Crescent, Maitama Abuja, which is being held over by the Defendant.

ii. The sum of N46, 583,333.00 (Forty Six Million, Five Hundred and Eighty three Thousand, Three Hundred and Thirty Three Naira) only being the arrears of rent owed by the Defendant to the Plaintiff for the period, 18th day of July 2014 to 8th day of September 2015.

iii. The sum of N6,125, 844.74 (Six Million, One Hundred and Twenty Five Thousand, Eight Hundred and Forty Four Naira, Seventy Four Kobo) being

arrears of service charge owed by the Defendant to the Plaintiff for the period, 18th day of July 2014 to 8th day of September 2015

iv. Mesne profit at the rate of N3,583,333.00 (Three Million, Five Hundred and Eight Three Thousand, Three Hundred and Thirty Three Naira) per month, based on the current annual rental value of the premises which is N43,000,000.00 (Forty Three Million Naira) from the 9th day of September 2015 until the defendant yields possession of the premises to the Plaintiff.

v. Monthly service charge of N366,666.67 (Three Hundred and Thirty (sic) Six Thousand, Six Hundred and Sixty Six Naira, Sixty seven kobo based on the current annual service charge of N4,400,000.00 (Four Million, Four Hundred Thousand Naira from the 9th day of September 2015 until the defendant yields possession of the premises to the Plaintiff.

vi. Interest on the above sums at the rate of 12% or the prevailing commercial banks lending rate as approved by the Central Bank of Nigeria (CBN).

vii. The cost of this action”

Upon service of the originating processes on the Defendant the parties sought to settle their differences out of court and the court obliged them time. After several adjournments however, Mr Osegbo Stanley for the Plaintiff informed the court their settlement could not be achieved as “the Defendant refused to fulfill its promises to the Plaintiff”.

The Defendant however had vacated the premises in question (on a date yet to be ascertained) and paid some money to the Plaintiff.

The matter therefore proceeded to hearing with PW1, Aliyu Usman, Plaintiff’s employee and sole witness. He adopted his witness statement on oath of 9th March 2016 wherein he testified inter alia that the Defendant had a long lease of 13 years over the office building known as AANI House, situate at Plot

417 Tigris Crescent, Maitama, Abuja, with its appurtenances. That the premises in question became vested in the Plaintiff by virtue of a judgment of the Federal High Court to made on 15th December 2014 in suit no FHC/2/CS/186/14 - see Exhibit P1.

The Defendant executed the Deed of Assignment of the its unexpired lease in the Plaintiff's favour, and the Plaintiff became seized of the said premises as the assignee of the unexpired residue of the long lease of 13years.

The Defendant however, did not, vacate the premises immediately as expected, but continued to occupy the whole of the 2nd floor without paying rent and service charges to the Plaintiff.

By exhibit P2 letter dated 18th December 2014, the Plaintiff demanded that the Defendant pay the sum of N48,000,000.00 as annual rent and service charge for the said premises, the Defendant disregarded both letter.

By Exhibit P3 another letter dated 5th February 2015, the Plaintiff wrote the Defendant expressing her displeasure over the Defendants attitude and gave the defence up till 20th February 2015 to pay for its use and occupation of the premises.

The Defendant responded via Exhibit P4 dated February, 17th 2015 with apologies and pleaded to for 90 days to settle her outstanding obligations to the Plaintiff.

The Plaintiff via Exhibit P5 dated 19th February, 2015, gave the Defendant 60 days to pay up its indebtedness whilst reminding the Defendant of the need for a tenancy agreement between the parties.

The Plaintiff made a final demand for the payment for use and occupation of the premises via Exhibit P6 dated 2nd April 2015. By Exhibit P7 dated 19th June 2015, the Plaintiff instructed its solicitors P. N Udogu & Co to issue Statutory notices to quit and notice of owner's intention to recover possession to the defendant.

Consequently, the Defendant being a tenant at will was issued 7 days notice to quit Exhibit P8 dated 1st September 2015. (Received same day and notice of owner's intention to apply to recover possession Exhibit P10 dated 11th September 2015. (Received same day)

The Defendant by letter dated September, 2nd 2015, promises to vacate the premises on or before 31st October 2015. That notwithstanding the Defendant did not vacate the premises.

PW1 further testified that the annual rent of the 2nd floor of AANI building is N43,000,000. The annual service charge for the 2nd floor aforesaid is N4,400,000.

That the Defendant was not a good tenant and the premises is in a state of disrepair.

That the Plaintiff intends to renovate the premises and make personal use of same. That the Plaintiff is entitled to the relief sought.

The Defendant did not file a statement of defence and did not appear in court to cross examine PW1 despite the opportunity granted them. PW1 was subsequently discharged and the defence foreclosed.

In Plaintiff's final written address settled by Kalu Onuoha Esq., but argued by Osegbo Ifedora filed on 23rd May 2018 but deemed duly filed and served on 15th May 2019, the Plaintiff raised a sole issue for the determination of the court thus;

“whether the Plaintiff has proved that it is entitled to the arrears of rent and mesne profits claimed.

Learned counsel submitted that from the unchallenged evidence of PW1, that the Plaintiff has satisfied the requirements of S 190 (1) of the Recovery of Premises Act to entitle it to recover the arrears of rent/service charge and mesne profits in issue, further, that S. 12 & 13 of the Recovery of Premises Act permit the landlord to claim for arrears of rent and mesne profit in one claim.

See **JOYLAND V WEMABOD ESTATE LTD (2008) 17 NWLR (PT 1117) 647 AT 660 – 661** per Muntaka Coomassie JSC. Thus, apart from vacant possession (which the defendant had already given up the court was urged to grant the claims of the Plaintiff.

In resolving the sole issue for determination distilled by learned counsel to the Plaintiff: “ Whether the plaintiff has proved that it is entitled to the arrears of rent and mesne profits claimed”.

In proof of its case the Plaintiff called sole witness PW1 Aliyu Usman, its employee whose evidence was unchallenged and uncontroverted by the Defendant in any manner whatsoever.

The law is trite that where evidence led by one party is credible and remains undisputed, unchallenged and/or uncontroverted by the other party, such evidence ought to be believed and acted upon by the court.

See **DEPUTY SHERIFF, KADUNA STATE HIGH COURT V KEYSTONE BANK LIMITED & ANOR (2015)LPELR – 25876 CA AT PAGE B-C PER AKEJU (JCA; MARTCHEN INDUSTRIES NIGERIA LTD V M.F KENT WEST AFRICA LTD (2005) LPELR – 1842 (SC) PAGE 15-16 PARAGRAPHS G-A** per Oguntade JSC (as he then was).

I observed the PW1 and I found him to be a credible witness. I accept his evidence led before this court and I act on it. PW1 tendered Exhibit P2 wherein it was indicated to the Defendant that the reserved rent and annual service charge for the premises (2nd floor AANI Building) in question are N43m and N4,400,000 per annual respectively.

In Exhibit P2 the Plaintiff demand a combined sum of N48, 759,178.07 as outstanding bills, comprising:

S/N	DESCRIPTION	PERIOD	AMOUNT
1.	RENT	18/72014 17/07/2015	43,000,000
2.	SERVICE CHARGE PROBATED BGL (110SQ.M)	15/05/2014 17/07/205	5,171,506.84

3	SERVICE CHARGE (PROBATED) AANI (125 SQM	15/05/2014 17/07/2015	587,671
	Total		48,759,178.07

The Defendant admitted this entire sum via their response in Exhibit P4.

What is admitted needs no proof. See **BASIL ANIKA V DIAMOND BANK PLC 2014 LPELR 23981 (CA) PAGE 16 PARAGRAPH C**, Per Aboki JCA. It is therefore clear that the annual rental value for the premises in question is N43 m per annum & service charge is N4,400,000 per annum.

According to the Plaintiff learned counsel, at paragraph 4.1. 15 of his final written address the Defendant vacated the premises on 31st March 2016.

In the absence any information to the contrary, I accept 31st March 2016 as the date the Defendant vacated the premises.

By Exhibit P8, the notice to quit served on the Defendant expired on 8th September 2015, after which date the Defendant ceased to be a tenant at will of the Plaintiff.

The Plaintiff having proved his case, I therefore hold that the Plaintiff is entitled to the claim of arrears of rent from 18th July 2014 to 8th September 2015 = N46, 583, 333 September 2015 i.e.

N43, 000, 000
+ N3, 583,333
N46,583,333

The Plaintiff is also entitled to the claim of N6,125,844.74 being arrears of service charge owned by defendant from 18th July 2014 to 8th September 2015 as claimed.

I award the Plaintiff mesne profit at the rate of N3,583,333.00 per month based on the current annual rental value of the premises which is N43m from 9th September 2015 till 31st March 2016 = 6 ½ months X 3,583,333 = N23, 291, 664.5k.

And monthly service charge of N366,666.67 based on the current annual service charge N4,400,000 from 9th September 2015 till 31st March 2016 = 6 ½ months = N2, 383,333.35 cost. This is a 2016 case which ought to have ended long before now. Several processes were served outside jurisdiction, in Lagos State. I award costs of N100, 000 in favour of the Plaintiff.

There is no evidence before this court of agreed interest rate of 12% or prevailing commercial bank lending rate as approved by the Central Bank of Nigeria (CBN)

I therefore award to the Plaintiff post judgment interest at 10% per annum pursuant to Order 39 Rule 4 of the High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules, from today 27th February, 2020 till the judgment sum is fully liquidated.

As the parties had indicated that the Defendant had paid some money to the plaintiff towards settlement of this matter out of court. Any sum already paid by the Defendant shall be deducted from the judgment sum.

Hon. Judge