

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 22 WUSE ZONE 2 ABUJA.
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU
ON THE 12TH DAY OF MARCH, 2020**

SUIT NO: CV/2501/19

BETWEEN:

MR. TOCHUKWU CHINYELU -----CLAIMANT

AND

HAJIA HADIZA ADAMU BAYERO -----DEFENDANT

ROSEMARY OKEKE for the plaintiff

ABDULAHY HASSAN for the defendant

JUDGEMENT

In an originating summons dated 21st January 2019, the claimant formulated the following issues for determination.

1. Whether by virtue of the tenancy agreement of the parties, the claimant is the rightful and lawful tenant of the described premises known as and described as 3 bedroom flat situate at Flat 1, Plot 563, 15 Durban Street, Wuse II, Abuja.
2. Whether by virtue of the tenancy agreement of the parties, the claimant as rightful and lawful tenant of the described premises known as and described as 3 bedroom flat situate at Flat 1, Plot 563, 15 Durban Street,

Wuse II, Abuja is not entitled to a valid and proper notice of the defendant's intention to receive vacant possession of the premises as contemplated in the agreement of the parties.

3. Whether by virtue of the tenancy agreement of the parties, the defendant letter dated July, 1 2013 amounts to a valid notice of the defendant's intention to receive vacant possession of the described premises known as and described as 3 bedroom flat situate at Flat 1, Plot 563, 15 Durban Street, Wuse II, Abuja as contemplated in the agreement of the parties.
4. Whether by virtue of the tenancy agreement of the parties, the claimant as rightful and lawful tenant of the described premises is not entitled to a peaceable and unencumbered enjoyment of all the rights and privileges according by virtue of the said agreement of the parties.
5. Whether the rights and privileges of the claimant is rightful and lawful tenant of the property known as Flat 1, Plot 563, 15 Durban Street, Wuse II, Abuja can be extinguished by the defendant without the due process of law and in line with the provision of the agreement of parties.
6. Whether the issuance of the notice dated the 20th May, 2019 and titled notification of non-renewal of tenancy by defendant to the claimant in contravention of the relevant agreement of parties and due process of law is not wrongful, unlawful, illegal and without any basis in law as it violets the claimant's constitutional rights as guaranteed under the agreement of parties.

And upon a determination of the questions in the affirmative, the claimant prays as follows;

- i. A declaration that by virtue of the tenancy agreement of the parties, the claimant is the rightful and lawful tenant of the described premises known as Flat 1, Plot 563, 15 Durban Street, Wuse II, Abuja.
- ii. A declaration that by virtue of the tenancy agreement of the parties, the claimant is the rightful and lawful tenant of the described premises known as Flat 1, Plot 563, 15 Durban Street, Wuse II, Abuja is entitled to a valid and proper notice of the defendant's intention to recover vacant possession of the premises as contemplated in the agreement of parties.
- iii. A declaration that by virtue of the tenancy agreement of the parties, the defendant's letter dated 20th of May, 2019 does not amount to a valid notice of the defendant's intention recover vacant possession of the described premises known as Flat 1, Plot 563, 15 Durban Street, Wuse II, Abuja as contemplated by the parties to the agreement.
- iv. A declaration that by virtue of the tenancy agreement of the parties, the claimant is the rightful and lawful tenant of the described premises is entitled to a peaceable and unencumbered enjoyment of all the rights and privileges according by virtue of the said agreement of the parties.
- v. A declaration that the rights and privileges of the claimant as rightful and lawful tenant of the described premises known as Flat 1, Plot 563, 15 Durban Street, Wuse II, Abuja cannot be extinguished by the

defendants without the due process of law and in line with the provision of the agreement of parties.

- vi. A declaration that the issuance of the Notice dated 20th May 2019 and titled notification of non-renewal of tenancy by the defendant to the claimant in contravention of the relevant agreement of parties and due process of law is wrongful, unlawful, illegal and without any basis in law as it violates the claimants rights as guaranteed under the agreement of parties.
- vii. An Order of injunction restraining the defendant whether by themselves, their servants, agents and or privies or any personality through them by whatsoever name called from further trespassing or in any way interfering with the claimant's peaceable possession of the said property rightly described as Flat 1, Plot 563, 15 Durban Street, Wuse II, Abuja.
- viii. An Order for the payment of the sum of **₦5,000,000 (Five Million Naira)** by the defendant to the claimant as damages for the wrongful act of the defendant under the agreement of parties.
- ix. An Order that the defendants pay the plaintiff the sum of **₦1,000,000 (One Million Naira)** as cost of this suit.

In support, the claimant deposed to a 17 paragraph affidavit and four (4) document annexed. Also attached to the writ is a written address of counsel to the claimant which was adopted as their oral argument.

In opposition the defendant filed a 12 paragraph counter-affidavit with two (2) documents annexed. The counsel also filed a written submission. From the counter-affidavit, it does appear to me that the deponent admitted and rightly too that the letter dated 20th May, 2019 Annexure A attached to the affidavit in support of the originating writ is not a Notice to quit, but letter was to give effect to the clause in the tenancy agreement terming the contract between the claimant and the defendant. Furthermore Annexure C the Notice of non-renewal of tenancy is also not a Notice to quit and neither is it a Notice of Owner's Intention to Recover Possession as stipulated under the Recovery of Premises Act.

The defendant in paragraph 11 of its counter-affidavit seek that the Court Order the plaintiff to vacate the premises based on the undertaking attached to the counter-affidavit. It is confirmed by the counsel to the plaintiff that the plaintiff has vacated the premises, however she was not sure if the plaintiff had surrendered possession to the defendant. The defendant's counsel however maintained that the plaintiff have not surrendered possession to the defendant.

Upon a careful consideration of the arguments of counsel to both parties and the documents tendered particularly Annexure A, B and C attached to the originating Summons, I answer all the questions formulated by the plaintiff in the originating summons in the affirmative. And in consequence, uphold all the prayers contained in paragraphs 1-6 of the Originating Summons. Prayer 7 is spent, the plaintiff having vacated the premises.

On the award of damages, the reason given by the plaintiff in the affidavit is not cogent and compelling enough to convince the court that the plaintiff merits the

damages sought for. The family living in fear of sudden eviction is not backed up by any fact in the affidavit. The plaintiff has asked for ~~N~~**1,000,000 (One Million Naira)** as cost. The plaintiff's claim is declaratory in nature. It is a judicial statement confirming the legal right of the plaintiff. It does not contain any Order that may be enforced against the defendant. The issue revolves around interpretation of the doctrine that cost follows events, no event has occurred to occasion an award of cost. Parties are therefore ordered to bear their respective cost.

SIGNED

HON. JUDGE

12/3/2020

Matter is adjourned to 19/5/2020 for hearing of the counter-claim and defense thereto.

SIGNED

HON. JUDGE

12/3/2020