

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI-ABUJA**

SUIT NO: CV/2806/2019

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

BETWEEN:

GREENHAVEN ESTATES LTD - CLAIMANT

AND

MR. OLABODE M. OMOTOLA - DEFENDANT

Appearances:

Stella Ilobekeme Esq holding the brief of Emeka Obegolu Esq for the claimant.

Godwin Attai Haruna Esq appeared for the defendant.

JUDGMENT

The claimant in this suit, through a writ of summons dated and filed the 4th day of September, 2019, claims as follows:

- a) a declaration that the defendant has breached the terms of the tenancy agreement validly entered between parties and thus has become a tenant at will;
- b) a declaration that the tenancy agreement between the claimant and defendant has been determined by effluxion of time.
- c) a declaration that the act of the defendant by his willful refusal to pay the rent at the sum of Five Million, Two Hundred Thousand Naira (N5,200,000.00) inclusive of service charges amounts to a breach of agreement validly entered into between the claimant and the defendant.

- d) a declaration that the 7 days notice (Owner's intention to recover possession) was a sufficient notice in line with the tenancy agreement
- e) a declaration that the claimant is entitled to enter and take over possession of its property having validly given the requisite notice to the defendant.
- f) an order directing the defendant to remove his personal belongings and/or properties from the premises of the claimant.
- g) an order directing the defendant to pay up the rent already accrued as a result of his failure to move out of the property of the claimant until the full and final possession by the claimant.
- h) an order awarding the sum of N1, 000,000.00 (One Million Naira) in favour of the claimant as the cost of this suit.
- i) Post judgment interest at 10% interest from the date judgment is delivered until the judgment sum is finally paid up.

The writ was accompanied by a statement of claim dated the 13th day of August, 2019 and a witness statement on oath dated this 4th day of September, 2019.

Attached to the writ are the following documents:

- a) Power of Attorney made between Donella West Africa Ltd and Greenhaven Estate Ltd in respect of the property known as Plot No. 93, Kado District, Kado, Abuja;
- b) Tenancy Agreement made between Greenhaven Estate Ltd (Estate Agent) and Mr. Olabode M. Omotola (Tenant) dated the 30th day of March, 2015;
- c) An acknowledgement of a receipt of payment of rent, service charge fee over 3 bedroom flat and room service quarters at Flat 5, Plot No. 93, Kado District, Abuja in the sum of N5,450,000= including 5% Legal Fees and documentation;
- d) Tenant's profile;
- e) Another Tenancy Agreement made the 29th day of March, 2017 between Greenhaven Estate Ltd (Estate Agent) and Mr. Olabode M. Omotola (Tenant);

- f) Reminder of unpaid rent over the three bedroom flat situate at Plot No. 93, Kado District, Kado, Abuja;
- g) Notice to Tenant of owner's intention to reply to recover possession of a Three Bedroom Flat situate at Plot NO. 93, Kado District, Kado, Abuja;
- h) Cash/cheque Receipt in the sum of N1,000,000= bearing the name of the claimant dated the 1st day of August, 2019;
- i) Affidavit of service sworn to by Omeiza Salihu.

The defendant in his response to the claim filed a statement of defence and Witness Statement on oath all dated the 27th September, 2019;

The claimant put up one witness before the court in proof of the claim in which was adopted by the same and was cross-examined accordingly.

The defendant on his own part selected not to lead any evidence inspite of the fact that he has filed a Witness Statement on Oath.

In compliance with the provision of section 294 of the constitution of the Federal Republic of Nigeria, both parties were asked to file their final addresses.

The claimant filed his final written address dated the 7th day of November, 2019, and the Defendant too filed his dated the 18th day of November, 2019.

Thus, by the statement of claim by the claimant it is stated and averred that the defendant became the claimant's tenant sometime in June, 2015 and which tenancy expired in June, 2017. However, before the expiration of the said tenancy, the defendant requested that his tenancy be extended and made a cash deposit of the sum of N200,000= to show his seriousness. That the defendant gave the claimant his word that the balance of the sum of N5,000,000= (Five Million Naira) only would be paid into the claimant's account number and this said sum has remained unpaid till date.

That the defendant, however, reneged on his promise and every effort to get the defendant to pay up the said sum proved abortive.

That in December, 2018, the claimant issued the defendant with Six months notice to quit the demised premises after which the defendant was also issued with a seven day's owner's intention to recover possession.

That the claimant thereafter briefed its lawyer to aid in the recovery of the debt and subsequently to file this suit.

The counsel to the claimant in is written submission raised sole issue for the court to determine, that is to say:

“Whether the claimant has proved its case to entitle the claimant to reliefs claimed in the statement of claim?”

The counsel submitted that it is settled law that unchallenged pleadings signifies admission to the facts as stated in the pleadings, and he cited the case of *F.B.N. Plc v. Akinyosoye* (2005) 5, NWLR (Pt. 918) P. 373 paras. B-E, and the case of *Cole v. Jibunoh* (2016)4 NWLR (Pt. 1503) 499 to the effect that facts admitted needs no further proof.

The counsel also submitted that a party who desires judgment in a matter must prove his case on the preponderance of evidence, and he cited the case of *U.T.C. Nig. Plc v. Philips* (2012) 6 NWLR (Pt. 1295) 168 and also section 137 (1) of the Evidence Act 2011, as amended, and submitted further that the claimant has discharged the burden placed upon it.

The counsel submitted that parties are bound by their agreement, and he cited the case of ***Osesa v. Tulip Cocoa Processing Ltd (2018) LPELR 45003 CA, Agbachi v. Azubuiké (2010) LPELR 3646*** and ***First Concept Associates (W.G) LTD V. Tropics Finance And Investment Co. Ltd (2014) LPELR 22644 42 paras. F-G.***

The counsel submitted earlier that the evidence of the claimant remains uncontroverted hence admitted by the Defendant and facts admitted needs no further proof, and he cited the case of ***Ogolo v. Fabura (2003) 11 NWLR (Pt. 831)*** and section 123 of the Evidence Act, and also the case of ***R.O. Oliyide & Sons Ltd v. Obafemi Awolowo University., Ile-Ife (2018)LPELR 43711.***

The counsel contended that from the evidence brought before this court, it is not in doubt that the claimant and

defendant has landlord and tenant relationship in which the claimant though having made a demand for the payment of rent or deliver up possession of the house, and he cited the case of **Mbu v. I.B.T.C. Bank Plc (2016) 12 NWLR (PT. 1527) at 397 413** to the effect that cause of action for recovery of debt arises after demand has been made for the payment and the person in possession has refused to surrender, and further submitted that the defendant breached his tenancy agreement entered between both parties for the period between 30th March 2017 to 29th March, 2019, and that the claimant has fulfilled the provision of the law by issuing and serving the defendant with Notice to Quit the demised premises, a demand the defendant failed to oblige.

The counsel further submitted that once a valid notice has been issued the tenancy automatically determined at the expiration of the notice, and he cited the case of **Cobra Ltd & Ors v. Amole Estates And Investment Ltd (2000) LPELR 6809 (CA)**.

The counsel further submitted that the defendant did not lead evidence in rebuttal to the claimant's claim but merely just denied the averments by general traverse which is not an effective way of denial in law and he cited the case of **U.B.N. Plc V. Chimaeze (2014) LPELR 22699 (SC)**, and the case of **IFETA v. Shell Petroleum Development Corporation Of Nigeria (2016) & NWLR (Pt. 983) 585**, and he then urged the court to hold that the claimant has successfully established that the defendant breached the tenancy agreement validly entered between the parties, and therefore entitled to the reliefs sought.

The defence counsel in his written address formulated one issue for this court to determine, that is to say:

“Whether the plaintiff has fully discharged the burden of proof placed upon it to be entitled to the reliefs sought in this case?”

The counsel to the defendant submitted that for the claimant to have judgment in its case, it must have credible documentary evidence as required with respect to recovery of

processes particularly as provided under the Recovery of Properties Act, and this is the requirement of the law under section 131(2) of the Evidence Act, as amended, and he quoted the same provision of the Evidence Act. He further submitted that in an action for declaration of rights or reliefs, the plaintiff must succeed on the strength of his own case and not the weakness of the defence. The counsel then urged this court to know that the plaintiff has not cleared the burden of proof on the balance of probabilities, and he cited section 136(2) of the Evidence Act, and to him the burden does not shift.

Now, let's adopt the issue formulated by both counsel as I have found it to be suitable, that is to say:

“Whether the claimant has proved its case to entitle to the reliefs claimed.”

Thus, by the evidence of the PW1, who is the claimant's sole witness, it is testified to the fact that the defendant renewed his tenancy with the claimant, upon the completion of the initial two year term tenancy, through another tenancy agreement for the period of the 30th March, 2017 to 29th March 2019 and the said agreement was duly signed by all the parties wherein the defendant promised to pay the money into the claimants account No. 0021891097 with Access(Diamond) Bank Plc, and that the defendant requested to pay the money in spite of various demand.

It is in evidence that the claimant informed the defendant to look for another apartment and move out of the property in issue as he could no longer afford the rent, and the defendant refused to move out of the property, and a seven day's notice of owner's intention to recover possession was served upon the defendant, and still the defendant refused to quit the property, and then despite owing to the period of 30th March 2017-29th March, 2019 the defendant continued to enjoy the demised premises.

It is in evidence that the claimant has to pay to his lawyers the sum of N1000,000= as legal fees for the service rendered.

These, pieces of evidence have not been challenged during cross examination, as no question was asked capable of debunking them. And in this circumstance, the question that arose is what is the effect of the evidence that has not been challenged? To this, I commend the case of **Usokoya v. Onigemo (2018) FWLR (Pt. 942) P. 433 at 469 para. C** where the Court of Appeal, Lagos Division held that unchallenged evidence is good evidence on which a court should act to make its findings of facts.

It is on this premise, I have to hold that the evidence of the claimant has not been challenged and I have to act upon it, and I therefore, so hold.

The defendant did not offer or advance any evidence, this is because, his witness statement on oath has not been adopted by the witness himself, and as such it has not been admitted in disproving the claim of claimant and it is deemed not proper before the court. See the case of **Kekong v. State (2008) ALLFWLR (Pt. 923) P. 77 at 96 paras. A-C** where the Supreme Court held that a fact that never forms part of legal evidence before the court cannot be used or relied upon by a court of law to show that contradict an existing legal evidence. Only documents tendered as exhibits are evidence before the court. By this, and for the fact the witness did not adopt his witness statement, I will be correct not to ascribe any probative value to it, and therefore for all intents and purposes the evidence of the claimant has not been controverted. See the case of **Akinbajo v. Olowo-Layemo (2018) ALL FWLR (Pt. 968) 649 at 662 paras C-D** where the Court of Appeal, Ibadan held that a court of law is enjoined to adopt and act on evidence that is not controverted as the truth of the matter in issue.

Assuming but not conceding that this is not the position of law on an unadopted evidence by a witness, let me consider the witness statement on oath with a view to ascribe any probative value to the one that is credible.

The defendant in his witness statement on oath admitted to the fact that he has renewed his tenancy at the expiration of the other for another term from 30th March, 2017-29th March, 2019 by entering another apartment with the claimant, and he also admitted that he promised to pay the claimant the agreed sum by paying into the account of the claimant with Access Bank Branch. However he denied paragraphs 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 of the claimant's statement of claim. See the case of *F.B.N. Plc v. Akinyosoye* (supra) to the extent that a mere general traverse which does not contain any specified denial is insufficient to put a matter in issue. The defendant through his witness statement on oath should have gone further to explain the circumstances showing clearly what have transpired between him and the claimant thereby disproving or debunking the evidence of the claimant, this the defendant has not done. The witness also did not submit himself to be cross examined in order to test the authenticity of his evidence. See the case of ***N.I.T.T.L v. Okeke (2017), ALL FWLR (Pt. 899) p. 199 at 220 paras C-E per Akaahs, JSC*** (as he then was).

“I agree with the submission of learned counsel for the respondent that since the respondent submitted receipts to back up the expenses he claimed to have made, the only way to test whether they are credible evidence is through cross-examination to ascertain the authenticity.” It is on this premise I hold that the evidence of the defendant, as filed and not adopted has no probative value.

Let me examine the documents relied upon by the claimant.

The Power of Attorney Exhibit A9 dated the 1st day of September, 2014 made between Donella West Africa Ltd and Greenhaven Estate Ltd and by the recital, the donor delegates his authority to the claimant to manage its property located at

Plot 93, Kado District, Kado, Abuja and this gives the power the power to the claimant to institute this action.

The agreement EXH 'A8' made the 28th day of March, 2017 between the two parties that in consideration of the rent hereinafter reserved and the covenant on the part of the tenant, hereinafter contained, the landlord lets unto the tenant all that premises namely a one Three Bedroom apartment at flat 5, Plot 93, Kado District, Kado, Abuja to hold the same unto the landlord for a term of two (2) years certain, commencing on the 30th day of March, 2017 and expiring on the 29th day of march, 2019, paying the sum of Five Million Naira (N5,000,000=) only. The tenant, having paid the sum of Five Million Naira (N5,000,000=) only representing payment of his rent for the said period.

By this, it could be inferred to mean that the landlord and tenant relationship has been duly established that the tenant covenants that at the expiration of the said term, peaceably to yield up the rented premises to the estate agent with all fittings and fixtures (except tenant's fixtures and additions thereto) in a good and tenantable repair and condition, and the tenant also covenants to hand over the keys at the expiration of the term to the Estate Agent or his representative.

It is a covenant between all the parties that the notice to quit the rented premises shall be for a period of one (1) month to the expiration of the tenancy, failure to serve such notice will not bar any subsequent notice to quit, and that if the tenant holds over the premises for a period of one month, after the expiration of this term without paying the complete new rent for the new term that may apply, it shall be lawful for the Estate Agent to enter and retake physical possession of the premises, evicting anyone found therein and no action shall lie against the landlord or Estate Agent in damages for exercising his right.

By this agreement, it could be inferred that a notice to be given at the expiration of the tenancy is one month prior to the effluxion of the time, and that the Estate Agent shall enter and retake physical possession of the premises.

The tenancy expired as of the 29th March, 2019, and therefore, the tenant should have yielded the possession of the premises to the claimant being the estate agent, but he has not done so. However, contrary to the claim of the claimant, I have not seen in the agreement that the rental value of the said premises would be paid in due course rather it has been witnessed that the sum of N5,000,000= was paid by the defendant to the claimant as rent.

Another document is the notice to tenants of owner's intention to apply to recover possession of the said premises EXH. 'A4' which was served upon the defendant.

Thus, it was held in the case of **Ohuangho V. Edegbe (2017) All FWLR (pt 907) p. 1795 at pp. 1806-1807 paras. G-A** by the court of Appeal, Benin Division that a landlord desiring to recover possession of the premises let to his tenant shall firstly, unless the tenancy has already expired, determine the tenancy by service on the defendant of an appropriate notice to quit. 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. Thereafter, the landlord shall file his action on court and may proceed to recover possession of the premises according to the law. In the instant case the tenancy between the claimant and the defendant has expired by effluxion of time since the 29th of March, 2019, and that the seven (7) days notice of the intention of the landlord to recover the possession of the demised premises has been duly served upon the defendant, still he refused to yield up possession of the premises to the claimant.

It is on this premise that I have come to the conclusion that the procedure set down by the law for a landlord to recover his premises has been duly satisfied, and that the tenancy between the two parties has expired since the 29th of March, 2019.

The last document attached to the witness statement on oath of the claimant is the receipt EXH. 'A5' evidencing

payment of legal fee to the tune of N1, 000,000= issued by the counsel to the claimant for the services rendered and which is dated the 10th day of August, 2019. In trying to persuade myself with regard to this claim of cost of litigation, let me have recourse to the case of **Fijabi Adebo Holdings Ltd v. Nigeria Bottling Co. Plc (2017) All FWLR (pt 882) p. 1227 at 1254 para. G.** where the court held that cost of prosecution is a specie of special damages which must be specifically proved. In the instant case the claimant exhibited a receipt which was issued to him by the counsel handling this matter, and by this it is proved by the claimant that he is entitled to the refund of same.

Based upon the consideration of the above issues, I have to come to the conclusion that both parties must be bound by their agreement they have willfully entered in regards to the tenancy see the case of **Enemchukwu v. Okoye (2018) All FWLR (pt. 929) p. 231 at 247 paras. F-G** where the court held that in civil matters, parties are bound by their agreement. Courts generally do not interfere on the manner that parties choose to do business with each other as long as it is not criminal. When contracts are voluntarily entered into by parties, this becomes binding on them based upon the terms they have set out for themselves. Where there is a valid contract agreement and its terms and conditions, the parties ought to be bound by it. In the instant case both parties have duly signed the tenancy agreement, and they must be bound by it.

To this, I am satisfied that the claimant has proved substantial part of his claims, and I therefore answer the question formulated for this court to determine.

It is hereby declared that the defendant has breached the terms of the tenancy agreement validly entered between the parties and thus has become a tenant at will.

It is declared that the tenancy between the claimant and the defendant has been determined by effluxion of time.

It is declared that the 7 days notice of owner's intention to recover possession was a sufficient notice in line with the tenancy agreement validly entered between the two parties.

It is declared that the claimant is entitled to enter and take over possession of its property having validly given the requisite notice on the defendant.

It is hereby ordered that the defendant should remove his personal belongings and/or properties from the premises of the claimant and to yield up possession immediately.

The defendant is hereby ordered to pay to the claimant the sum of N208,333.33k as mesne profit from the 30th day of March 2019 to the date when the possession will be yielded to the Claimant.

The sum of N1,000,000= is awarded to the claimant as cost of this suit payable by the defendant.

The claimant failed in his claim of the sum of N5,200,000= as rent as it is in the agreement that the defendant has paid the sum.

No 10% interest is awarded.

Signed
Hon. Judge
29/1/2020