

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE JUDICIAL DIVISION ABUJA**

HOLDEN AT ABUJA

Delivered the 23rd March, 2020

BEFORE HIS LORDSHIP: HON. JUSTICE ASMAU AKANBI – YUSUF

FCT/HC/CV/2309/18

BETWEEN

ALPHA PLUS ASSOCIATES LIMITED CLAIMANT

AND

MRS. AMINA RABIU DEFENDANT

JUDGMENT

The Claimant Alpha Plus Associates Limited filed a writ of summons on the 11th July, 2018 against the defendant. The claimant claims against the defendant as follows:

1. A Declaration of the Honourable Court that the claimant is entitled to recover and take possession of the furnished and serviced 5 bedroom flat situate and known as No. 11, Ali Baba Street, Jabi – Abuja, FCT. Presently occupied by the defendant as her tenancy has

been determined by the service of all required statutory notices on her by the claimant.

2. An Order of the Honourable Court directing the defendant to vacate the premises forthwith and appurtenance of the furnished and serviced 5 bedroom flat she is presently occupying as a tenant at will since on the 5th of October, 2012.
3. An Order of the Honourable Court directing the defendant to pay the claimant the sum of #39,704,838. 78 (thirty – nine million, seven hundred and four thousand, eight hundred and thirty – eight naira, seventy – eight kobo) only, being the accumulated arrears of rent for 2012 to 2017 owed the claimant by the defendant.
4. An Order of the Honourable Court directing that the defendant shall pay the claimant 10% of the judgment sum until the premises is delivered to the claimant.

The defendant despite being served via substituted service failed and/or neglected to defend this matter. The PW1 is an Estate Surveyor employed in the firm of the plaintiff; that she manages the house known as No.11, Ali Baba Street, Jabi Abuja; that the defendant entered into a tenancy agreement with the claimant for term certain of one year in respect of the subject matter which commenced on the **5th October, 2011** and that a receipt of payment was issued by the claimant on the 4th of June, 2012; that the defendant's tenancy commenced on the 5th October, 2011. That

the defendant pays yearly rent of #7,496,311.18 (Seven Million, Four Hundred and Ninety – Six Thousand, Three Hundred and Eleven Naira, Eighteen Kobo), that the tenancy expired on 4th October, 2012; that the defendant's one year expired the 4th October, 2012. That the defendant is in arrears of rent of #7,496,311.18 (Seven Million, Four Hundred and Ninety – Six Thousand, Three Hundred and Eleven Naira, Eighteen Kobo) only, per annum for 2012, 2013, 2014, 2015, 2016 and 2017 which accumulated to the sum of #39,704,838. 78 (Thirty Eight Million, Seven Hundred and Four Thousand, Eight Hundred and Thirty Eight naira, seventy eight kobo) only; that the tenancy of the defendant has expired, and at the effluxion of time, the claimant caused a notice to quit to be served on the defendant the 26th April, 2018; that the notice to quit was served through substituted service; that after the expiration of the notice to quit on the 7th May, 2018; the notice of owners' intention to recover possession was served on the defendant through substituted means by the bailiff of the High Court; that despite the notices on the defendant, she failed, neglected or refused to pay the arrears of rent from 4th October, 2012 to 4th October, 2017; that the claimant wants to make personal use of the property. The pw1 adopted her statement on the 25/6/19. The following documents were admitted in evidence:-

- 1) Exhibit A is the Notice to quit dated the 26th April, 2018 together with the certificate of service dated the 27/4/18.

- 2) Exhibit B is the Notice to Tenant of Owners' Intention to Recover Possession dated the 8th April, 2018 together with the certificate of service dated the 9/5/18.

The matter was adjourned for cross examination. It is on record the defendant was served with hearing notices at all adjournments; she however failed to appear in court to put up her defence. Thus the defendant was foreclosed. Learned Counsel to the plaintiff filed a written address the 22/10/19 and same was adopted the 18/ 2/ 2020. As it is, the evidence before the court is unchallenged and one sided. The plaintiff raised two issues for determination, that is:

- 1) Whether by determination of the term of the tenancy and the defendant holding over, the claimant has validly determined the defendant's tenancy by giving the defendant the required statutory notices and can recover the premises from the tenant.*
- 2) Whether the claimant is entitled to the accumulated arrears of rent and mesne profit owed by the defendant since 04/10/2012 when her rent expired.*

I shall decide the suit on the issues formulated by the plaintiff.

- 1) Whether by determination of the term of the tenancy and the defendant holding over, the claimant has validly determined the*

defendant's tenancy by giving the defendant the required statutory notices and can recover the premises from the tenant.

Learned counsel to the plaintiff submits that the defendant entered into a tenancy relationship with the claimant on the 5/10/11 and that the said tenancy expired the 4/10/2012. That upon the expiration of the tenancy, the defendant continued in occupation of the subject matter and failed to give up possession of the premises to the claimant. He continued further that since a new tenancy was not created, the tenant became a tenant at will. He referred the court to *PAN ASIAN AFRICAN CO. LTD V NICON INSURANCE CORPORATION (NIG) LTD (1982) SC (REPRINT) 1; (1982) ALL NLR 229*. The plaintiff's counsel submit further that the landlord and tenant jurisprudence is sui generis ,thus specific condition precedent must be complied with for an action to be initiated under the due process of law. He stated that the condition precedent is for the requisite valid statutory notices be served on the defendant, that is: the notice to quit and notice to tenant of owners' intention to recover possession of the premises. He referred the court to S. 8 of the Recovery of Premises Act; that all actions for recovery of premises shall strictly comply with the procedures as provided in the Act; that the service of valid notices is a precondition for Recovery of Premises. He cited the authority of *AYINKE STORES LTD V ADEBOGUN (2008) 10 NWLR (PT 1096) PG 612@ 617 AND 618*. He stated that Exhibits A and B are clear indication that valid statutory notices were served on the defendant as required by *s.*

8 OF THE RECOVERY OF PREMISES ACT. HE REFERRED TO TINIOLA V OKON 91966) ALL NLR 469 @ 470, ODUTOLA & ANOR V PAPERSACK NIGERIA LTD (2006) 11-12 SC @ PAGES 88 & 89 (2006) 18 NWLR (PT 1012). Counsel urged me to resolve issue 1 in favour of the claimant.

Resolution 1

The fact that the defendant didn't file a statement of defence does not mean the plaintiff will scale through. It is trite that the plaintiff has the burden to prove his claims. See **FRANCIS OSAWE ESEIGBE v. FRIDAY AGHOLOR & ANOR (1993) LPELR-1164(SC)** "A party in a civil case, where the proof is on the preponderance of evidence, cannot safely decline to offer evidence where on the evidence led a rebuttal of such evidence is required. The onus of proof is not static; it shifts depending on the nature of the case and the evidence offered by either party. However the onus of adducing further evidence is always on the party who would fail if such evidence were not produced."

It is also the law that where in civil cases a defendant fails to file a defence or rebut any issue in claim, the burden of proof becomes minimal. It is the law that where the evidence is uncontradicted, the onus of proof is satisfied on a minimal proof since there is nothing on the other side of the scale. However minimal proof remains minimal and does not mean no proof. Thus, the failure on the part of a defendant to give evidence does not exonerate the plaintiff from proving his case though minimally.

It is trite that after the expiration of a tenancy or valid determination of a tenancy, the relationship of the landlord would ordinarily come to an end. The procedure for recovery of premises is as stated in ***IHENACHO & ANOR v. UZOCHUKWU & ANOR (1997) LPELR-1460(SC)*** “A landlord desiring to recover possession of 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 in court and may only proceed to recover possession of the premises according to law in terms of the judgment of Court in the action.”

It is the evidence of pw1 that exhibit A was issued on the defendant the 26th April, 2018. Exhibit A is the Notice to Quit; it is pertinent I reproduce it:

To: MRS AMINA RABIU

No. 11, Ali Baba Street, Jabi

Abuja, F.C.T

NOTICE TO QUIT

I, hereby as legal practitioner for *ALPHA PLUS ASSOCIATES LIMITED*, your Landlord and on their behalf give you Notice to Quit and deliver up possession of the Five (5) bedroom flat and premises with the appurtenances, situated at No. 11, Ali Baba Street, Jabi within Jabi District of Abuja F.C.T, which you hold of them as tenant thereof on the 7th day of May, 2018 next.

Dated this 26th day of April, 2018

Signature

Landlord's Solicitor

It is the position of the law that in a tenancy relationship, the nature of the tenancy shall determine the length of notice to be given before a landlord can apply for the recovery of premises. See *JOSEF v. ADOLE (2010) LPELR-4367(CA)*. A notice to quit is essential in recovery of premises, particularly where there is no tenancy agreement or any other evidence to guide the court. The question that comes to mind is whether exhibit A is sufficient evidence before the court? The answer is No! Based on the available evidence before the court, a party who wishes to succeed on a claim must provide cogent evidence to support his testimony. For a quit notice to be valid, it shall contain the following; the name of the landlord,

name of the tenant , address of the subject matter, the nature of the tenancy, duration of the tenancy, the day the tenancy will expire, the length of notice as agreed by the parties. By exhibit A, neither the duration of the tenancy nor the day it will expire was stated. Also the length of notice as agreed by parties is not contained therein. I would have been properly guided if the plaintiff had tendered the evidence of payment or tenancy agreement between parties. It is not stated in the notice to quit when the tenancy commenced or expired. How do I know the nature or tenure of the tenancy created? The testimony of the witness cannot replace the requirements expected in recovery of premises matters. It is the evidence of the pw1 in paragraph 5 and 6 of her witness statement on oath that the defendant's tenancy commenced on the 5th of October, 2011 and same expired the 4th October 2012. Furthermore, the pw1 in Para 4 of her witness statement on oath states: that the defendant entered into a Tenancy Agreement with the claimant for a term certain of 1 (one) year in respect of the serviced and furnished five (5) bedroom flat located at No. 11, Ali Baba Street, Jabi, Abuja- FCT. Commencing on the 5th of October, 2011 and was issued with a receipt of the payment of rent by the claimant on the 4th of June 2012. It is trite that in cases of recovery of possession the Notice to Quit is a condition precedent to the exercise of jurisdiction. In the absence of a valid quit notice under the law, the claim of the claimant for recovery of possession would not be considered to have been properly instituted. Exhibit A; the supposedly Quit Notice said to have been issued

and served on the defendant is invalid and improper as same lacks the requisite features required of a notice to quit. A valid quit notice is a precondition which is to be satisfied before the court can assume Jurisdiction. Learned Counsel to the claimant argued that by exhibit A, the tenancy relationship between the parties was determined on the 26/04/2018. Furthermore, exhibit B which is the Notice to tenant of owners' intention can only come into being where the tenancy relationship came to an end by effluxion of time or a valid notice to quit has been issued and served on the defendant. From the available evidence before the court, I hold that Exhibit A cannot be effectively used by this court to recover possession of the subject matter from the defendant. The claimant has failed to ignite the Jurisdiction of this court. *AYINKE STORES LTD v. MR. S.A. OLA ADEBOGUN (2008) LPELR-3831(CA)* "It is the law that for a Court to assume jurisdiction, the following requirement must be satisfied:

a. That the Court is properly constituted as regards number and qualification of members of the bench and no member is disqualified for one reason or another.

b. That subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the Court from exercising its jurisdiction.

c. The case comes before the Court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

See MADUKOLU V. NKEMDILIM (1962) 2 SCNLR P. 341. A.G. ANAMBRA STATE V. A-G, FEDERATION (1993) 6 NWLR (PT.302) PAGE 692. Any decision taken by a Court without jurisdiction would be an exercise in futility no matter how well reasoned and decided. The case must be initiated by due process and must fulfill any condition precedent for the Court to exercise its jurisdiction.”

The Claimant having failed to fulfill the condition precedent before filing an action for recovery of possession of the subject matter, the claim for possession is bound to fail and same resolved against the Claimant.

RESOLUTION 2

Whether the claimant is entitled to the accumulated arrears of rent and mesne profit owed by the defendant since 04/10/2021 when her rent expired.

In civil cases, the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings. See *Section 133(1) of the Evidence Act 2011*. Again *Section 132 of the Evidence Act 2011* provides:-

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

See MTN NIGERIA COMMUNICATIONS LTD v. OLAJIRE A. ESUOLA (2018) LPELR-43952(CA)

It is the evidence of the pw1 that the defendant pays yearly rent of #7,496,311.18. (Seven million, four hundred and ninety – six thousand, three hundred and eleven naira, eighteen kobo) that the defendant was issued with a receipt of payment of rent by the claimant on the 4th of June, 2012. See also Paragraph 6 of the statement of claim. Learned Counsel argued that the defendant is liable to pay arrears of rent and mesne profit based on her continuous occupation of the premises. I agree with the Claimant's Counsel position; however the court can only determine the arrears of rent or mesne profit where the claim is buttressed with sufficient evidence. The Claimant must plead and prove relevant facts that will entitle him to judgment. See *MTN NIGERIA COMMUNICATIONS LTD v. OLAJIRE A. ESUOLA (SUPRA)*

In the instant case, there is neither a document nor rent receipt to establish the claim before the court. The question is has the claimant in this case discharged the burden placed on him? I do not think so! It is further the evidence of pw1 particularly Para 8 witness statement on oath, that after the expiration of the defendant's tenancy, the claimant made repeated demands for the defendant to pay arrears of the accumulated rent. A claimant who wishes to recover debt, particularly running into millions of naira must place cogent and credible evidence before the court. It is not for

a witness to come to court and state unsupported testimony, even matters placed under the undefended procedure, the claimant is expected to annex document(s) in support of the claim. I do not know when the tenancy commenced and/or lapsed; how do I determine the arrears of rent? The claimant in this case wants the court to speculate or decide without any documentary or credible evidence. Speculation on evidence is not one of the functions of a Court. Rather a Court receives and acts on evidence placed before it by parties in accordance with the law. *ROYAL EXCHANGE ASSURANCE NIGERIA PLC v. MICHAEL G. ANUMNU (2002) LPELR-6071(CA)*; *See ARIGBABU v. OYENUGA (2019) LPELR-47381(CA)*

“In civil cases the initial burden of proof is on the party who desires that Judgment be entered in his favour based on facts which he asserts to prove those facts as required by law...SECTIONS 131, 132 AND 133 OF THE EVIDENCE ACT 2011. But the burden of proof in civil cases is not static; it shifts depending on the state of the pleading of the parties. See the case of BUHARI VS OBASANJO (2005) 7.S.C. PART II PAGE 123. The standard of proof in civil cases is on the balance of probabilities or preponderance of evidence. See SECTION 134 OF THE EVIDENCE ACT 2011.”

The standards of proof in civil cases are discharged on the balance of probabilities or the preponderance of evidence. It is the duty of the court to weigh the evidence by placing it on an imaginary scale of justice before

arriving at a decision. From the evidence adduced by Pw1, she has not discharged the onus placed on her. I am not unmindful of the fact that the defendant didn't file a statement of defence, the failure to file one does not prevent the claimant from proving his claims. As stated earlier, matters are decided on the preponderance of evidence or probabilities; a claimant must succeed on his own strength. *See s.134 Evidence Act*. It is the duty of the trial Court to weigh the evidence of the parties on an imaginary scale of justice and give judgment to the side whose evidence weighs more. *CATHERINE OKORIE v. EZUGBO CHUKWUDI (2013) LPELR-21203(CA)*, having placed the testimony of the Pw1 on the scale of evidence, I cannot attach any weight to the evidence placed before the court, thus the second issue is resolved against the claimant.

On the whole, I hold that the claimant has failed to prove her case on the balance of probabilities. Accordingly, judgment is hereby entered against the claimant. The claims of the Claimant are refused and same is hereby dismissed. There is no order as to cost.

ASMAU AKANBI – YUSUF (HON. JUDGE)

APPEARANCES:

Parties absent.

T. D MAIH, Esq. for the Claimant.