

**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/544/2018

BETWEEN

MRS. NGOZI ANIEZUE (SUING THROUGH HER ATTORNEY

MR VICTOR OFOEGBU)

PLAINTIFF

AND

V. T. S GLOBAL INVESTING LTD

DEFENDANT

JUDGMENT

The plaintiff's claims against the defendant, as contained in the writ of summon are as follows:

- a) AN ORDER of this Honourable Court directing the defendant to vacate and deliver up immediate vacant possession of the said property and all its appurtenances

situate, lying and being at Plot 4A Kuranakh Close, off Amazon Street, Maitama, Abuja.

b) AN ORDER of this Honourable Court directing the defendant to pay all arrears of rent and mesne profit calculated from at the rate of N458, 333 per month thereof, from 12th February, 2018, until vacant possession is delivered.

c) The sum of N1, 000,000 being general damages.

d) Cost of this suit.

The defendant was duly served with the originating processes. The matter came up for hearing the 27/03/19, despite been duly served with hearing notice, the defendant refused to show up in court. The lawful attorney to the plaintiff testified on oath as the PW1. He identified and adopted his statement on oath as his oral testimony. He tendered Exhibits A, B, C1, C2, D1 & D2 respectively. The matter was adjourned for cross examination. The defendant filed a *MOTION NO: M/4980/19*, it is an application for extension of time within which to file the defendant's memorandum of conditional appearance and same was granted upon the payment of the default fees, thus the matter was further

adjourned for cross examination of the PW1. PW1 was finally cross examined on the 2/5/19. The defendant was at various times foreclosed from further cross examining the pw1 as well as defending the matter. Written addresses of counsel were thereafter ordered. The plaintiff's counsel filed a motion for extension of time within which to file the written address and same was heard the 23/1/20. N. OMEH ESQ who represented the defendant, argued that they had 21 days to respond to the plaintiff's written address and asked for an adjournment to do the needful. Thus the matter was adjourned for adoption of final written addresses. On the 18/2/20, in the usual manner of the defence, the defendant was neither in court nor represented. No written address was also filed by the defence counsel. Counsel to the plaintiff adopted the written address and the case was adjourned for Judgment.

The statement on oath of PW 1 VICTOR OFOEGBU which he adopted as his oral testimony is as follows:

1. That I am an Estate Surveyor and Valuer and a lawful attorney to the plaintiff in this suit, in respect of the property situated at Plot 4A Kurannakh close, off Amazon Street,

Maitama, Abuja by which fact I am conversant with the facts of this case.

2. That the defendant is a company incorporated under the law of Federal Republic Nigeria and a tenant in said six-bedroom duplex situated at Plot 4A Kurannakh close, off Amazon Street, Maitama, Abuja owned by Plaintiff.

3. That the defendant who was already a tenant of the Plaintiff on the adjoining property of the Plaintiff at Plot 4A Kurannakh close, off Amazon Street, Maitama, Abuja, through its Managing director, Mr Thompson Agana offered to rent the above named six-bedroom duplex which was then vacant and unoccupied at an annual rent of N5,500,000.

4. That, I being the agent of the Plaintiff, accepted to rent same to the Defendant, for one year certain without an option for renewal.

5. That upon payment of the said rent both parties executed tenancy agreement for one year certain commencing from the 12th day of February, 2018.

6. That pursuant to the executed tenancy agreement, the defendant was aware that they were expected to deliver vacant possession of the rented property at the end of the tenancy year.

7. That I did not immediately serve the Defendant with the statutory 7 days Quit Notice and a 7 day's Notice of the Owner's intention to apply to recover possession, because the Plaintiff had hoped that the Defendant will clear up all outstanding rent and moved out of the property, but the Defendant failed to renew its tenancy, neither did it vacate possession of the rented property.

8. That seeing that the Defendant were evading me and the Plaintiff and have refuse to vacate possession of the property as well as renewing their rent, I was complied to issue the 7 days Quit Notice, which is dated 12th November, 2018, which was followed up by a 7 days' Notice of the owner's Intention to apply to recover possession, dated 21st November, 2018. Both Notices were at different times pasted at the gate house of the rented property and photographed when it was not possible to serve the Defendant personally. The said 7 days quit Notice and 7 days' Notice of owner's Intention to apply to recover possession pasted at the gate house of the rented property and the photograph thereof together with the certificate of production are hereby pleaded and shall be relied upon at the hearing of this suit.

9. That at the expiration of the 7 days' Notice of the owner's Intention to apply to recover possession of the rented property the

Defendant still failed, refused and or neglected to deliver up possession of the rented property.

10. That I repeatedly called on the defendant through its Managing Director to Yield possession of the rented property but all to no avail.

11. That having served all the necessary documents on the Defendant and upon the refusal of the Defendant to vacate the said property, the Plaintiff briefed the law firm of Mike Ozekhome's Chambers, to prosecute this case against the Defendant for the recovery of her property.

12. That I need the assistance of this Honourable Court to recover possession of the rented property.

13. That I do solemnly and sincerely depose to this Affidavit in good faith, and I make this solemn declaration conscientiously, believing same to be true and correct, in accordance with the Oaths Act, LFN 2004.

The documents tendered in evidence are as follows:

1. Exhibit A is the Witness statement on oath dated the 13th December, 2018

2. Exhibit B is the Tenancy agreement between parties
3. Exhibit C1 is the 7 days notice to quit dated 12th November, 2018.
4. Exhibit C2 is the seven days notice of owners' intention to recover possession dated 21st November, 2018.
5. Exhibits D1 & D2 are the printed copies of the notices posted at the rented property.

Learned counsel to the plaintiff formulated two issues for determination:

Whether the plaintiff having proved her case beyond reasonable doubt against the defendant is entitled to all the reliefs sought as contained in the writ of summons and statement of claim

Whether the court ought to grant the prayers of the plaintiff, the defendant having failed to file a statement of defence or entering defence

The plaintiff's counsel argued that the agreement between both parties with respect to the property subject matter of this suit was for one year certain without an option of renewal. That the plaintiff, issued to the defendant a 7 days' notice to quit and 7

days owners' intention to deliver up possession and upon the continued default of the defendant, the plaintiff had to institute this proceedings. Counsel submits that the defendant entered into an agreement with the plaintiff and thus should abide by the terms of agreement. She referred to the court to the following cases:

OKONRONKWO V ORJI 2019 LPELR 46515 CA, INCORPORATED TRUSTEES OF NIGERIAN BAPTIST CONVENTION & ORS V GOVERNOR OF OGUN STATE & ORS 2016 LPELR 41134 CA, GTB PLC V OBOSI MICRO FINANCE BANK LTD 2018 LPELR 44518 CA.

Counsel submit further that the term of tenancy agreement between parties was for one year certain and not subject to renewal. That upon the expiration of a tenancy for a term certain, the tenant becomes a tenant at sufferance. She relied on the case of ADEJUMO V DAVID HUGHES AND COMPANY LTD 1989 LPELR 20454 CA, CHAKA V MESSRS AEROBELL (NIG) LTD 2012 LPELR 8392 (CA).

Counsel submits that the failure of the defendant to submit the demised property to the plaintiff after the expiration of agreed term is a breach of contract. That by exhibit B, the defendant was

meant to vacates the said premises at the expiration of the fixed one year certain. She submitted that assuming but not conceding that the demised property is not for one year certain, ordinarily the defendant ought to have renewed the tenancy, but that the defendant neither delivered up possession nor attempted to renew the said tenancy. The tenancy has since expired for well over two years. Counsel relied on OBAJIMI V ADEDIJI 2008) 3 NWLR (PT 1073) 1 @ PP 16 – 17 PARAS H – B,

Counsel further submits that the defendant was served with the two statutory notices required by law for recovery of premises. She relied OYEBESAN V OYEBESAN (2014) LPELR 23358 (CA), CHEMIRON (INTL) LTD V STABILINI VISINONI LTD (2018) LPELR 44353 (SC), COKER V ADETAYO & ORS (1996) LPELR 879 (SC).

Counsel submitted further, that the sole reason why the defendant failed to file a statement of defence and other accompanying documents, despite being given the opportunity is because it had no defence to the suit. She referred the court to MACAULAY V NAL MERCHANT BANK LTD (1986) 5 NWLR (PT 40) 216 @ 223, OKOEBOR V POLICE COUNCIL & ORS (2003) LPELR 2458 (SC), GODWIN JOSIAH

V STATE (1985) LPELR 1633 (SC), FUT MINNA & ORS V OLUTAYO (2017) LPELR 43827 (SC).

Learned Counsel urged the court to grant the plaintiff's reliefs as contained in the writ of summons and statement of claim.

I have considered the plaintiff's case, the entire evidence before the court viz- a- viz the plaintiff's written address and I am of the view that the sole issue for determination in this case is:

Whether the plaintiff has proved her case to be entitled to the reliefs claimed.

A brief summary of the plaintiff's case is that the defendant rented plot 4A KURANAKH CLOSE, OFF AMAZON STREET, MAITAMA ABUJA at an annual rent of #5, 500, 00 (Five Million Five Hundred Thousand Naira) and that the rent was for one year term certain without an option to renew. That upon payment of the agreed sum parties executed a tenancy agreement for one year certain to commence from 12th February, 2017 and expire the 11th February, 2018. It is the plaintiff's case that the defendant failed to deliver up possession after the expiration of the tenancy. From the evidence before the court, the question that comes to mind is

whether the defendant has breached the terms stipulated in exhibit B. That is, the Tenancy Agreement. The tenant by exhibit B agreed as follows:

B. to pay the total rent of #6 million upon renewal.

C. to pay the rent hereby reserved at the time and in the manner hereinbefore mentioned throughout the term hereby created whether or not the Landlady formally demands same.

By the above clauses, it is clear that there is an intention to renew the tenancy by the plaintiff; however this is subject to the condition agreed to by the defendant. The defendant has also not stated categorically that the tenancy was renewed. The burden of proof is on the defendant. SEE SECTION 131 EVIDENCE ACT. It was based on the failure of the defendant to renew his rent and or deliver up possession that the plaintiff instituted this action. By this I hold that the defendant breached the tenancy agreement entered into with the plaintiff, and it is upon that, this suit was brought against the defendant.

It is the law, that for a landlord to be entitled to possession of his property he must have given to the tenant the requisite statutory

notice(s). SEE THE CASE OF OWOADE V TEXACO AFRICA LTD LPELR 2851. In a Tenancy relationship, the position of the law is that the nature of a tenancy determines the length of notice to be given before a Landlord can apply for the recovery of the demised premises. SEE JOSEF V. ADOLE (2010) LPELR-4367(CA) where the Court of Appeal stated *“The position of the law is that a lease or tenancy for a fixed term automatically determines when the fixed term expires. Quit notice is usually obviated in the case of a fixed tenancy since the term of expiration is normally known unlike periodic tenancies that continues automatically from period to period until it is determined by a notice to quit. See Nweke v. Ibe (1974) 4 ECSLR page 54. All that a landlord is required to do is to recover possession in a fixed term tenancy, as in the instant case, is to serve on the tenant seven days notice of owner's intention to apply to Court to recover possession.”*

In the present case, the plaintiff in paragraph 5 of the witness statement on oath states: that upon payment of the said rent both parties executed a tenancy agreement for one year certain commencing from the 12th day of February, 2017 to expire on the 11th day of February, 2018. (See also Para 5 of the statement of

claim); therefore it is not in dispute that the tenancy in question was for a fixed term with effect from 12th February, 2017 to 11th February, 2018. This fact was not denied by the defendant. It is trite law that when a fact is pleaded by the Plaintiff and same is not expressly denied or issues not joined by the other party, those facts are deemed admitted by the Defendant. The defendant held over the premises without renewing the rent nor delivering up possession, I therefore hold that the tenancy between the parties was for one year certain and the defendant in the eye of the law is now to be treated as a tenant at sufferance. SEE CHAKA V MESSRS AEROBELL (NIG) LTD (SUPRA), see also AFRICAN PETROLEUM LIMITED v. J. K. OWODUNNI (1991) LPELR-213(SC) *where the Supreme Court stated who a tenant at sufferance is, "Now, a tenancy at sufferance is one in which the original grant by the landlord to the tenant has expired, usually by effluxion of time, but the tenant holds over the premises. In such a case the tenant's right to occupation of the premises to which he had come in upon a lawful*

title by grant is at an end but, although he has no more title as such, he continues in possession of the land or premises without any further grant or agreement by the landlord on whom the right to the reversion resides. One necessary pre-condition of such a tenancy is that the tenant must have come upon the land or premises lawfully. Though he no longer, strictly, has an estate, the law will deem his right to possession to have continued on the same terms and conditions as the original grant till possession has been duly and properly wrested from him by the landlord or reversioner. It is a form of tenancy which, as it were, depends upon the law and not the agreement of the parties and can only be determined either by the landlord's lawful act of forcible entry, where it is still possible,

or by a proper action for ejectment after due notices as prescribed by law.”

I refer to the case cited by the plaintiff's counsel CHEMIRON (INTL) LTD V STABILINI VISINONI (SUPRA) PER PETER - ODILI JSC *“Of note also is that the tenancy the appellant was for a certain term of three (3) years and by virtue of Section 7 of the Recovery of Premises Law CAP. 118, Laws of Lagos State 1973 there was no necessity to serve a notice to Quit before initiating a recovery of premises action when the tenancy as in the case at hand is for a term that is certain. For effect, I shall quote the said Section 7 thus:- Section 7 of the Recovery of Premises Law CAP 118, Laws of Lagos State 1973 (“the RPL) provides that:-“ When and as soon as the term or interest of the tenant of any premises determines or has been duly determined by a written notice to quit as in Form B, C, or D, in Schedule 1 to this Law such tenant or if such tenant does not actually occupy the premises or only a part thereof is actually occupied, neglects or refuses to quit and deliver up possession of the premises or any part thereof, the landlord of the said premises or his agent may cause the person or neglecting or refusing to quit and deliver up possession to be*

served with a written notice as in Form E signed by the landlord or his agent of the landlord's intention to proceed to recover possession on a date not less than seven days from the date of service of the notice". From the said provision all the respondent needed to provide was service of seven days to the appellant and that was done. That position was affirmed by this Court in the case of IHEANACHO V UZOCHUKWU (1997) 2 NWLR (PT.487) 269-270." Also see SPLINTERS NIG. LTD & ANOR v. OASIS FINANCE LTD (2013) LPELR-20691(CA) where the Court of Appeal referred to the case of IHEANACHO V UZOCHUKWU (1997) 2 NWLR (PT.487) 257 @ 269-270 H-A wherein the Supreme Court set out the procedure for recovery of premises as follows: "A landlord desiring to recover possession of premises let to his tenant shall:

- (a) Firstly, unless the tenancy has already expired, determine the tenancy by service on the tenant an appropriate notice to quit. (b) On the determination of the tenancy, he shall serve the tenant with the statutory 7 day's notice of intention to apply to the Court to recover possession of the premises. (c) 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 the Court in the action. See also Ayinke Stores Ltd v Adebogun (2008) 10 NWLR (Pt. 1096) 612 , As clearly set out in Iheanacho v Uzochukwu (supra) heavily relied on by both sides, it is only when the tenancy has not expired that there will be need to determine same by notice to quit. It is obvious that if at the time the landlord seeks to recover his premises, the tenancy had already expired, it is reasonable to assume that there will be no need for a quit notice. All the landlord would be required to serve on the tenant would be the statutory day's notice of intention to apply to the Court to recover possession of the premises.”

Thus the tenancy having expired by effluxion of time, the defendant is only entitled to seven days notice of owners' intention to recover possession. SEE SECTION 7 OF THE RECOVERY OF PREMISES ACT. In this case, the defendant was served with two notices i. e seven days notice to quit and the seven days owners' intention to apply to court to deliver up possession. Exhibits C1 & C2 and these were not challenged by the defendant. The plaintiff

having complied with the precondition requirement by service on the defendant the requisite notice particularly exhibit C2, and same not denied by the defendant, I hold that the plaintiff is entitled to immediate vacant possession of the demised premises.

It is not in dispute that the defendant was a tenant of the plaintiff between the 12th February, 2017 to 11th February, 2018 at rent of #5,500,000.00 (Five Million Five Hundred Thousand Naira Only), thus the defendant is liable to pay mesne profit for the use and occupation of the premises till he delivers possession. In calculating the amount to be paid, I have had to look at the evidence before the court and the relief B claimed by the plaintiff, it is unchallenged and uncontroverted evidence and in the absence of the evidence of the current rental value, the plaintiff is therefore entitled to the sum of #458,333.00 per month starting from 12th February, 2018 until possession is delivered. The plaintiff further claims the sum of #1,000,000 being general damages. It is trite law that the essence of damages is to compensate for the loss occasioned by the conduct of the defendant. I have had to award mesne profit for the use and occupation of the premises; this is enough compensation to the

plaintiff. The award of general damages would amount to double compensation which the law expressly prohibits. In the circumstance, relief c is refused.

The fourth relief is the cost of the suit. Order 56 r (1) 3 HCR 2018 provides: in fixing the amount of costs, the principle to be observed is that the party who is in the right is to be indemnified for the expenses to which he has been necessarily put in the proceedings, as well as compensated for his time and effort in coming to court. The court may take into account all the circumstances of the case. (4) When costs are ordered to be paid, the amount of such costs shall, if practicable, be summarily determined by the court at the time of delivering the judgment or making the order. In the instant case, the plaintiff had to take out a writ of summons against the defendant, she is therefore entitled to cost assessed at N200, 000:00.

ASMAU AKANBI – YUSUF

HON JUDGE

APPEARANCES:

Oluchi Vivian Uche Esq. For the claimant
Patrick Ebeh – Defendant’s Representative