IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 9TH DAY OF JUNE, 2020
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 10
SUIT NO: CV/593/2011

BETWEEN:

MR. HENRY C. UNEKE ---- PLAINTIFF/DEFENDANT TO COUNTER CLAIM

AND

1. MR. CHIBUZOR K. OKOYE ---- COUNTER CLAIMANT
2. MALLAM NDA ---- DEFENDANT

JUDGMENT

The plaintiff instituted this action on the 15/11/2011 against the defendants seeking for damages among other reliefs. Upon service of the Writ of Summons, the 1st defendant filed his Statement of Defence and Counter Claim on the 3/5/2012. The case suffered series of adjournment's at the instance of the plaintiff with cost awarded severally against him and his counsel. On the

15/7/2013 the plaintiff filed a motion on notice to withdraw his claims before the Court. The motion was moved and granted on the 3/10/2013. Adjournment was given for the 1st Defendant/Counter Claimant to proceed with his Counter Claim. The 2nd defendant did not file any process before the Court.

The Counter Claimant claimed the following reliefs:

"1. A declaration that the defendant to counter claim was a tenant at will of the counter claimant following the expiration of his original tenancy with Complete Design Associates on 30/10/2010. And that the failure/refusal of the defendant to counter claim to renew his tenancy was malicious and out of spite.

2. An order of the Court directing the defendant to counter claim to pay the sum of N900,000.00 (Nine Hundred Thousand Naira) only being the proximate rent for the 18 months period he stayed over in the

shop at the rate of N600,000.00 (Six Hundred Thousand Naira) per annum being the rent hitherto agreed between the parties at the peace brokered by the elders in the complex sometime in 2009.

3. Cost of the suit."

On the 19/11/2013 the Counter Claimant testified for himself and was subsequently cross examined. The matter came up for defence of the counter claimant but upon failure of the defendant to counter claim to appear and in the absence of his counsel, he was foreclosed from defence. Upon his application, he was again given the opportunity to defend. This opportunity was also not utilized and he was foreclosed a second time and this Court bent backwards again the third time to allow the defendant to counter claim to put in his defence. Consequently, the defendant to counter claim filed a Defence to Counter Claim and testified on the 28/5/2019 and he was duly cross examined.

At the close of evidence, parties were directed to file written addresses. Learned counsel to the Counter Claimant **C.M. Ojobor Esq** filed the written address dated 27/9/2019 and raised a sole issue for determination as follows:

> *"Whether the Counter Claimant has proved his counter claim to warrant the Court to enter judgment in his favour."*

Counsel submitted that unchallenged evidence is deemed as admitted and facts admitted need no further proof and would be taken as established. He cited **Abiola vs. Alawoye (2007) 39 WRN 177 at 197, Adusei vs. Adebayo (2012) 17 WRN 1 at 5.** He added that since the defendant to counter claim did not lead credible evidence in support of his defence to counter claim, the Court should regard the defence to counter claim as having no probative value. He urged the Court to enter judgment for the counter claimant.

On his part the learned counsel to the defendant to counter claim **D.M. B. Orji Esq** filed his written address on the 6/2/2020 together with a reply on points of law. A sole issue was formulated therein as follows:

> *"Whether the excesses abandoned at the Magistrate Court for the Court to assume jurisdiction could be recovered after judgment had been delivered and enforced."*

Though counsel was not in Court to adopt, this Court will have recourse to the process which is on record. Learned counsel urged this Court to enter judgment for the defendant to counter claim in the sum of N200,000.00 reason being that the defendant to counter claim had already suffered in the hands of the counter claimant in execution of the judgment of the Magistrate Court, and goods worth N2 Million taken away from his shop. That a second enforcement will amount to double jeopardy which the law frowns against. He stated the position of the law

that no one should suffer twice in a particular offence. Reference was made to Aro vs. Fabolude (1993) 1 SCNLR (part 309) 58. That the counter claimant had abandoned the excess of his claim before the District Court and therefore cannot now be heard claiming the same amount before this Court.

I will start by making reference to the findings of the Court of Appeal in Williams vs. Haalstrup (2019) LPELR – 47496 (CA) where the Court held thus:

> *"In civil cases, proof of a matter is determined by the preponderance of evidence or the balance of probabilities. See the cases of* ***Imana vs. Robinson 1979 3-4 SC, Daodu vs. NNPC 1998 2 NWLR PT. 538 P 355, Kala vs. Potiskum 1998 3 NWLR PT. 540 P 1.*** *The Claimant who asserts has the burden to prove or establish his case with cogent and credible evidence otherwise his case would fail and it does not matter whether or not the defence of the*

Defendant is weak. He must rely on the strength of his case and not the weakness of the defence. See the cases of ***Imam vs. Sheriff 2005 4 NWLR PT. 914 P. 80, Elias vs. Omo-Bare 1982 2 SC P. 25 and Agbi vs. Ogbeh 2006 11 NWLR PT. 990 P. 65.*** *It is after such proof or establishment of his case that the burden shifts to the opposing party. See the cases of* ***Daodu vs. NNPC supra, Kala vs. Potiskum supra, IT Auma V. Akpe-Ime 2000 7 SC PT 11 24, Elias vs. Disu 1962 1 ALL NLR 214, Longe vs. FBN Plc. 2006 3 NWLR PT. 967 P. 228*** *and a host of others."*

The Counter claimant in his testimony stated that he purchased shop No. G.007, Area 1 Ultra Modern Shopping Complex, Garki Abuja when it was advertised for sale by the former owners. That the defendant to counter claim was given option to purchase same by the former landlord but he declined the offer. However, the defendant to counter claim got angry when he learnt that it was the counter

claimant who purchased the shop. Upon the intervention of some elders in the complex who brokered peace between the parties, the defendant to counter claim agreed to pay an annual rent of N600,000.00 (Six Hundred Thousand Naira) to the counter claimant as his landlord. And that when the tenancy expired, the defendant to counter claim held on to the shop from 30/10/2010 until 6/4/2012 (a period of 18 months).

Under cross examination, the counter claimant admitted that the defendant was in possession at the time he bought the property and the tenancy of the defendant was still subsisting.

In his defence, the defendant to counter claim did not controvert the evidence of the counter claimant. He stated under cross examination, that his rent expired on the 30/10/2010 and admitted owing the sum of N900,000.00 (Nine Hundred Thousand Naira) as arrears of rent.

The position of the law is that proof is about disputed facts and not otherwise. Facts admitted need no further proof. This well-settled position of the law also finds statutory expression in Section 123 of the Evidence Act 2011. See **Barau & ors vs. Consolidated Tin Mines Ltd & ors (2019) LPELR – 46806**

In **Akinlagun v. Oshoboja (2006) LPELR 348 at page 33**, the Supreme Court per (*Ogbuagu, J.S.C.*) reconfirmed this trite position thus:

> "It is now firmly settled that what is admitted needs no further proof."

The defendant to counter claim has categorically stated under cross examination thus:

> *"It is true that my tenancy expired on the 30/10/2010. It is true I am owing arrears of rent of N900,000.00 (Nine Hundred Thousand Naira)."*

Furthermore, when confronted with exhibit A5, the Application for Plaint and the CTC of the judgment of the District Court the defendant to counter claim confirmed to the Court that the Counter claimant did not claim arrears of rent therein. In that regard, the submission of learned counsel to the defendant to counter claim is of no moment. There is nowhere from Exhibit A5 where it is stated that the counter claimant abandoned his claim for arrears of rent. Learned counsel relying on double jeopardy in my view is also misconceived and out of context. I hold that it does not apply in the present circumstance.

It is trite law that an admission by a party against his interest is best evidence in favour of his adversary in the suit. See Onyenge vs. Ebere (2004) 13 NWLR (part. 899) 20; Kamalu vs. Umunna (1997) 5 NWLR (part. 505) and Ajide VS. Kelani (1985) 3 NWLR (part 12) 248. However, for an admission against interest to be valid in favour of the adverse party. It must not only vindicate or reflect the

material evidence before the court, but also vindicate and reflect the legal position. See Odutola VS. Papersack (Nig) Ltd. (2006) 11-12 SC 60.

The defendant to counter claim admitted being indebted to the tune of N900,000.00 (Nine Hundred Thousand Naira) being arrears of rent. He also confirmed that he locked up the shop when judgment was delivered against him at the Magistrate Court and that he had not appealed against the judgment. Since the defendant to counter claim has already been evicted and admitted he was owing the counter claimant the sum of N900,000.00 (Nine Hundred Thousand Naira), this Court would be on sound footing to enter judgment for the counter claimant.

Now looking at the reliefs, it is noted that tenancy between the parties was the issue handled by the District Court and judgment entered for the counter claimant. The issue before this Court is that for arrears of the rent accrued during the subsistence of the tenancy which the

defendant to counter claim had admitted to. This Court therefore cannot determine whether the failure of the defendant to counter claim to renew his tenancy was malicious or out of spite. Relief No. 1 is thus refused.

For relief 2, judgment is entered for the counter claimant in the sum of N900,000.00 (Nine Hundred Thousand Naira)being arrears of rent owed by the defendant to counter claim for the 18 months period he overstayed in the shop.

It is noted that the defendant to counter claim claimed the cost of this suit. The position of the law is that costs follow event and a successful party should not be deprived of his costs unless for good reasons. See SEABY vs. Olaogun (1999) 10 – 12 SC at 59. In Akinbobola vs. Plisson Fisko Nigeria Ltd (1991) 1 NWLR (part 167) 270, Kawo, JSC stated:

"The award of costs is of course, always at the discretion of the Court which discretion must be exercised both judicially and judiciously…"

The essence of costs is to compensate the successful party for part of the losses incurred in the litigation. Costs cannot cure all the financial losses sustained in the litigation. It is also not meant to be a bonus to the successful party, and it is not to be awarded on sentiments. See **Bonum (Nig) Ltd vs. Ibe & anor (2019) LPELR – 46442 (CA).**

In this instance, the counter claimant and his counsel appeared severally before this Court in a case that has spanned a period of 9 years. This Court is therefore inclined to exercise its discretion to award costs to serve as some cushioning or palliative effect on the financial burden of the counter claimant.

As a result, I assess and fix cost of N100,000.00 (One Hundred Thousand Naira) in favour of the counter claimant.

Hon. Justice M.A. Nasir

Appearances:

D.M.B. Orji Esq – for the plaintiff/defendant to counter claim

Anthony Agbonlahor Esq with him C.M. Ojobo Esq – for the defendant/counter claimant