

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT KUBWA, ABUJA**  
**ON TUESDAY, THE 3<sup>RD</sup> DAY OF JULY, 2020**  
**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**  
**JUDGE**  
**SUIT NO.: FCT/HC/CV/0066/17**

**BETWEEN:**

NAVY CAPT. DANIEL M. YAKUSAK (RTD) ----- PLAINTIFF

**AND**

UGOCHINYERE M.B. OGBONNAH ----- DEFENDANT

**JUDGMENT**

In a Writ filed on the 7<sup>th</sup> day of November, 2017 the Claimant – Navy Captain Daniel M. Yakusak (Rtd) claim the following against the Defendant – Ugochinyere M.B. Ogbonah:

- (1) An Order compelling the Defendant to yield to the Plaintiff vacant possession of the 5 Bedroom Duplex with Boys Quarter and Guest Chalet occupied by her at No.7 Tema Street, Wuse Zone 6, Abuja in good and tenantable condition and repair.**

- (2) An Order compelling the Defendant to pay to the Plaintiff Mesne Profit at the rate of Five Hundred and Forty One Thousand, Six Hundred and Sixty Seven Naira (N541, 667.00) per month from 31<sup>st</sup> April, 2017 (when the tenancy expired) till the date the Defendant yields effective and vacant possession of the said premises to the Plaintiff.**
- (3) An Order compelling the Defendant to pay all utility bills that has accrued and is accruing until the Defendant yield effective possession of the demised premises to the Plaintiff.**
- (4) Cost of the Suit and Solicitor's Fees.**

Because it was impossible to serve the Defendant personally with the Processes filed by the Claimant, the Court upon an application made exparte, granted an Order on the 22<sup>nd</sup> of January, 2018 for Substituted Service as sought by the Claimant.

The Defendant through his then Counsel – Victor Awa Esq. filed a Memorandum of Conditional Appearance on the 12<sup>th</sup> of February, 2018. They never filed any Preliminary Objection or Statement of Defence or Counter-Claim.

On the 24<sup>th</sup> of April, 2018 the Defendant Counsel – Victor Awa informed the Court that the Defendant had plan to settle this matter out of Court. He made promise to report back to Court for Report on Settlement. So for the next

three (3) adjournments the Court gave the parties time to explore settlement out of Court. But unfortunately the parties could not settle.

After over a year and a month the Defendant Counsel – Victor Awa filed a Notice of Withdrawal of Appearance as a Counsel to the Defendant. Meanwhile the Defendant has never appeared in Court in person. The Court took note of the said Withdrawal Notice and ensured that the Defendant was given ample time to get another Counsel to stand for him. BUT he never did. He never appeared in person too. The Court ensured that all Hearing Notices and all other Processes in this Suit were served on him at the Res the only address available to the Court. For reason best known to the Defendant – Ugochinyere M.B. Ogbonah, he never came to Court or fielded another Counsel to stand for him.

Since the Court could not wait for him in perpetuity, on the 27<sup>th</sup> day of May, 2019 the Claimant opened its case. Testified in Chief. Tendered two (2) documents. The matter was adjourned to the 24<sup>th</sup> day of October, 2019 for the Defendant to Cross-examine the Claimant. He never did. After several adjournments the Court foreclosed the Defendant from Cross-examining the Plaintiff on the 31<sup>st</sup> day of January, 2020 and reserved matter for Defendant to open his case.

On the 24<sup>th</sup> day of February, 2020 when the matter came up the Defendant was absent. As at that time he never

filed any Statement of Defence to challenge the case of the Claimant. He was not in Court to open his Defence, so the Court granted an application to foreclose him from opening and closing his defence and reserved the matter for Final Addresses.

The Plaintiff filed his and ensured that the Defendant was served with the said Final Address. On the 18<sup>th</sup> day of May, 2020 the Plaintiff Counsel adopted the said Final Address. Hence matter adjourned for Judgement.

It is imperative to note that though the Plaintiff's case is not challenged by the Defendant, the Court will still look and is duty bound to critically evaluate and analyze the case of the Plaintiff, his testimony and Exhibits tendered before it can come up with its final decision. This is so to ensure that the facts presented before the Court by the Plaintiff are credible enough to sustain his Claims.

In the Final Written Address the Claimant raised 4 (Four) Issues for determination which are:

- (1) Whether or not based on the preponderance of evidence adduced, the Claimant has proven that he is entitled to the grant of Order compelling the Defendant to yield up vacant possession of the 5 Bedroom Duplex with Boy Quarter and a Guest Chalet at No. 7 Tema Street Wuse Zone 6, Abuja.**

- (2) Whether or not based on the said evidence, the Plaintiff has proven that he is entitled to Mesne Profit as sought in this Suit.**
- (3) Whether or not based on the said evidence, the Claimant has proved that he is entitled to the Order compelling the Defendant to pay all Utility Bills that has accrued since the Defendant has been in possession of the said Building.**
- (4) Whether or not based on the same evidence, the Plaintiff has proved that he is entitled to the cost of this instituting and prosecution Suit.**

**On Issue No.1** he submitted that he had served the Defendant with appropriate Notice to Quit and Notice of Owner's Intention to Recover Possession. That the said Notices and Certificate of Service evidencing service of same on the Defendant were jointly tendered in evidence and were admitted as EXH 2. That Plaintiff had testified and tendered Exhibits evidencing his compliance with all the conditions required by law in order to be entitled to a grant of an Order compelling the Defendant to yield vacant possession of the said building. That Tenancy Agreement was duly executed by the Plaintiff and the Defendant which was tendered as EXH 1. That the Agreement evidences the existence of a Tenancy relationship between the Plaintiff and the Defendant. He urged Court to resolve Issue No.1 in his favour. He supported the above with the following case:

**Splinters Nigeria Limited & Anor V. Oasis Nigeria Limited**

**(2013) LPELR – 20691 (CA)**

**Chemiron International Limited V. Stabilini Visinom Limited**

**(2014) LPELR – 44353 (SC)**

**On Issue No. 2** on whether he is entitled to the Mesne Profit? The Plaintiff submitted that from the averment in paragraph 6 of the Statement on Oath of the PW 1 he had testified also that the Tenancy expired on the 31<sup>st</sup> of April, 2017 as evidenced by the Tenancy Agreement executed between the parties. That paragraph 8 shows that Claimant served the Defendant the Notice of Quit. That he had tendered both the said Notice as well as the Certificate of the service of the Notice. All these documents are before the Court. That by that he has proved his case satisfactorily that the said tenancy has been determined.

That in paragraph 7 of the Statement on Oath the Plaintiff testified that Defendant refused and failed to renew the rent for the demised premises and continued to hold over unlawfully. That the Claimant has fulfilled the pre-requisite in order for his claim of Mesne Profit to be granted. He referred to the case of:

**Odunsi V. Abeke**

**(2002) LPELR – 12167 (CA)**

That Claimant also testified in paragraph 5 of his Oath that the annual value of the Res is N6.5 Million. **EXH 1** – Tenancy Agreement and that the Mesne Profit is **Five**

**Hundred and Forty One Thousand, Six Hundred and Sixty Seven Naira (₦541, 667.00) per month.**

He urged Court to settle Issue No.2 in his favour and order the Defendant to pay Mesne Profit at the said rate of Five Hundred and Forty One Thousand, Six Hundred and Sixty Seven Naira (₦541, 667.00) per month from 1<sup>st</sup> May, 2017 till vacant possession is yielded to Plaintiff.

**On Issue No.3** on the Order compelling the Defendant to pay Utility Bills as accrued in the said Res, the Claimant submitted that as agreed in **EXH 1 – Tenancy Agreement**, the Defendant is to pay all Utility Bills accrued in the Res during his occupation of the said demised premises. That parties in this case are bound by the Contract Agreement they entered into. They urged Court to uphold the clearly expressed agreement of both parties in this case and settle Issue No.3 in Plaintiff's favour.

**On Issue No.4** on the Plaintiff being entitled to the cost of instituting the Suit and prosecuting same, he submitted that the Plaintiff has diligently made out his case which is unchallenged by the Defendant. That Court should not deprive him of the cost as he has suffered untold economic hardship by reason of the Defendant's deliberate decision to hold over the Res thus compelling him to incur legal fees in order to institute this action and prosecute same.

That he is entitled to cost and Court has inherent power to award cost against the Defendant in order for the Plaintiff to mitigate and defray the fees he incurred by virtue of instituting the action. He relied on the following cases:

**Zenith Bank PLC V. Emirate Creditcore  
(2016) LPELR – 41586 (CA)**

**Babatunde V. Bank of the Wolic  
(2011) LPELR – 8249 (SC)**

He urged Court to resolve the Issue No.4 in his favour.

### **COURT:**

It is the law and has been held in plethora of cases that once a tenant holds over and the normal procedure followed to notify such tenant by the service of Notice to Quit followed by kind intention to recover the premise, the Plaintiff has a right to seek redress in Court asking an Order for the defaulting tenant to vacate the premise and pay Mesne Profit for staying over.

Once this due process is followed and the notices issued as stated, the Plaintiff is entitled to his Claim. Where there is any miscalculations in the notices then it will be a herculean task for Plaintiff to establish his case in order to be entitled to his Claim.

In this case it is not in doubt that the Defendant is a tenant to the Plaintiff since May 2016. This is



established by the Tenancy Agreement EXH 1 tendered by the Plaintiff through PW1. The Defendant did not challenge that document though he was given all the ample time and latitude to do so. As stated earlier he did not file any Statement of Defence. He only filed a Notice of Conditional Appearance and nothing else.

He did not challenge the case of the Plaintiff in writing or in person. His Counsel – Victor Awa Esq. filed a Notice of Withdrawal of Appearance on the 10<sup>th</sup> of May, 2019. That is about 3 months after Defendant entered appearance on the 12<sup>th</sup> of February, 2019. All the Processes filed in this Suit by Plaintiff were served on the Defendant initially and later through his Counsel. But after the Counsel withdrew his appearance the Court ensured that the Defendant was notified and Hearing Notices and all other subsequent Process filed by the Plaintiff were served directly on the Defendant. But he never fielded another Counsel to represent him. He never represented himself too. It is trite that unchallenged Claim are deemed admitted.

Again the Plaintiff tendered 2 other documents – (EXH 2) which are Notice to Quit which were duly served on the Defendant. These documents were in line with the extant laws as far as Landlord and Tenancy Agreement is concerned. The Defendant did not challenge these documents. That means that the documents and the facts heralding them were uncontroverted and are

therefore deemed and actually admitted same. They were not rebutted.

From all indication there was due notice by Plaintiff. So this Court holds.

The Plaintiff by his evidence and documents tendered in proof was able to establish his Claim. He is entitled to the Order of this Court compelling Defendant to yield up the vacant possession of the Res – 5 Bedroom Duplex at No. 7 Tema Street Wuse Zone 6, Abuja without delay. He is also entitled to the Order of this Court compelling the Defendant to pay all the accrued Utility Bills since he has been in the premises and for the period of his overstay until the day he leaves the premises and give up vacant possession.

It is the law that once a tenant overstay in a premises, the Landlord having given him due Notices to Quit followed by Notice of Intention to Recover Premises, that the Landlord is entitled to Mesne Profit. That means that the Defendant is bound to pay Mesne Profit to the Landlord for the period he had overstayed calculated from the day of the overstay until he yield up possession of the premises.

In this case the Defendant had overstayed in the premises in that the tenancy has end since December 2016. Yet he did not yield up vacant possession.

Plaintiff is entitled to Mesne Profit. Without doubt the Defendant is liable to pay Mesne Profit to the Plaintiff calculated from the time of the overstay.

Since the Plaintiff has proved that the Tenancy has expired and that he gave due notice to Defendant yet Defendant overstayed, the Plaintiff is entitled to the Mesne Profit. So this Court holds. That Mesne Profit should be calculated from 30<sup>th</sup> April, 2017 until the Defendant yield up the possession. The Mesne Profit should be **Five Hundred and Forty One Thousand, Six Hundred and Sixty Seven Naira (N541, 667.00)** per month from 1<sup>st</sup> May, 2017 until he yields up the vacant possession.

He is also to pay up all Utility Bills from the date of the Tenancy until the day he yields up the vacant possession to the Landlord. He should yield the vacant possession of the premise to the Landlord without any further delay.

**This is the Judgement of this Court.**

**Delivered today the \_\_\_\_\_ day of \_\_\_\_\_ 2020  
by me.**

---

**K.N. OGBONNAYA**

**HON. JUDGE**