

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**HOLDEN AT ABUJA**  
**ON THURSDAY 28TH DAY OF MAY 2020**  
**BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI**  
**SITTING AT COURT NO. 14 APO - ABUJA**

SUIT NO. CV/0820/18

**BETWEEN:**

FEMI MOROHUNDIYA ... .. CLAIMANT

**AND**

MRS. NDIDI OLATUNJI-BELLO ... .. DEFENDANT

**JUDGMENT**

The Claimant is a legal practitioner. The summary of his case, as gathered from processes he filed to commence this action is that he inherited the Defendant as sitting tenant of the property in issue, being five bedroom duplex situate at ***Block 15, 30 Mediterranean Street, Imani Estate, Maitama, Abuja***, which he purchased from ***Imani & Sons Nigeria Limited***.

According to the Claimant, relevant notices were served on the Defendant to deliver up possession of the premises in December, 2016 and January, 2018 respectively, but that she has continued to hold over the premises and has stopped paying rents thereon since January, 2017.

On the premises of the foregoing facts, the Claimant commenced the instant suit in this Court by Writ of Summons and Statement of Claim filed on 05/02/2018 and by the operative Amended Statement of Claim filed on 25/04/2019 by order of Court, the Claimant claimed against the Defendant, reliefs set out as follows:

- 1. An order mandating the Defendant forthwith to give up and deliver possession of the 5 Bedroom Duplex lying and situate at Block 15, (30) Mediterranean Street, Imani Estate, Maitama, Abuja.***

- 2. Mesne profit in the sum of ₦8,666,666.07k (Eight Million, Six Hundred and Sixty Six Thousand, Six Hundred and Sixty Six Naira, Seven Kobo) only from the 1<sup>st</sup> day of January, 2017 to 31<sup>st</sup> January, 2018.**
- 3. Mesne profit in the sum of ₦666,666.07k (Six Hundred and Sixty Six Thousand, Six Hundred and Sixty Six Naira, Seven Kobo) only, per month from 1<sup>st</sup> February, 2018 till possession is give up.**
- 4. ₦2,000,000.00 (Two Million Naira) only being the cost of the suit.**
- 5. 10% interest on the above sums from the date of judgment till the final liquidation of the judgment debt.**

The Defendant joined issues with the Claimant by filing her Statement of Defence to which a Counter Claim is subjoined, on 04/12/2018. The summary of her case is that apart from receiving notification from **Imani & Sons Nig. Ltd.**, of the change of ownership

of the property in issue, the Claimant did not provide any other evidence of ownership thereof; that notwithstanding the purported change of ownership, the staff of **Imani** had continued to demand payment of rent from her. The Defendant also admitted receiving the notices both from Imani and the Claimant; and that the Claimant offered the property to her for sale and that she accepted the offer; that the issue of sale of the property took precedence over the issue of payment of rent and that she is still in the process of making payment.

The Defendant, by her Counter Claim, claims from the Claimant, the reliefs set out as follows:

- 1. An order of this Honourable Court declaring that the Plaintiff's purported notices, that is to say, seven (7) days notice to quit dated 30<sup>th</sup> June, 2016, and seven (7) days notice of owner's intention to apply to recover possession dated 19<sup>th</sup> January, 2018, are not competent before the law.***

2. *An order of this Honourable Court declaring that the offer for sale made by the Plaintiff to the Defendant and subsequent acceptance of same by the Defendant has created a binding contract between the parties and as such overrides the purported notices.*
3. *The cost of this suit which is put at ₦500,000.00 only.*

The Claimant filed Reply to the Statement of Defence and Defence to Counter Claim on 10/12/2018; whilst the Defendant in turn filed Reply to the Claimant's Defence to the Counter Claim.

At the plenary trial, the Claimant fielded two witnesses. The **CW1** is, by name, **Koman Simon**, Caretaker and Property Manager for the Claimant. He adopted the two *Statements on Oath* he deposed to and he tendered in evidence a total of three (3) documents as exhibits to support the Claimant's claim. The **CW2** (called on *subpoena*) is **Nura Haruna**,

Bailiff of Court attached to the Chief Magistrate's Court, Zone 2, Wuse, Abuja. He also tendered two (2) documents in evidence as exhibits to support the Claimant's case.

For the Defendant, one **Eugene Okolo** testified. He claimed to be the Auditor of *BNatural Nigeria Limited* of which the Defendant was the Managing Director. He adopted his written depositions on oath and further tendered in evidence a total of seven (7) documents to support the Defendant's case.

Upon conclusion of plenary trial, parties filed and exchanged their written final addresses as prescribed by the **Rules** of this Court.

The Defendant filed her final address on 11/12/2019. Her learned counsel, **Okechukwu Osuwa, Esq.**, formulated two issues for determination, namely:

***1. Whether on the evidence before this Honourable Court, the Defendant is a tenant of the Claimant?***

***2. Assuming but not conceding that (1) above is answered in the affirmative, whether the evidence of the PW1 is such as can be relied on by the Honourable Court.***

The Claimant's learned counsel, **Chidi Nwankwo, Esq.**, filed the Claimant's final address on 29/11/2019 (apparently before the Defendant filed her address). He further filed a Reply on Points of Law to the Defendant's final address on 17/12/2019. In his final address, learned Claimant's counsel formulated two broad issues, viz:

***1. Whether the Claimant has proved his case on the preponderance of evidence to be entitled to judgment in this suit?***

***2. Whether the Defendant has proved her Counter-Claim?***

Upon a careful examination and consideration of the pleadings, admissible evidence led on record in this suit and the totality of the arguments advanced by learned counsel in their respective written addresses, my view is that the focal issues that call for determination in this suit, without prejudice to the issues already formulated by the respective learned counsel, can be succinctly distilled as follows:

- 1. Whether the purported landlord-tenant relationship between the Claimant and the Defendant is recognized by law.***
- 2. If issue (one) is resolved in the affirmative, whether or not the said tenancy was determined by the due process of law; and if so whether or not the Claimant is entitled to recover possession of the premises and is entitled to the other ancillary reliefs claimed.***
- 3. Whether or not the Defendant satisfactorily proved her Counter-Claim.***



## TREATMENT OF ISSUES

### ISSUE ONE:

Parties are *ad idem* and it is firmly thus established that the property, subject of dispute in this suit, being five bedroom duplex situate at **Block 15, (30) Mediterranean Street, Imani Estate, Maitama, Abuja**, originally belonged to **Imani & Sons Nigeria Limited**, who let the same to the Defendant, sometime in January, 2003.

The case of the Claimant, as told by the **CW1**, is that the Claimant acquired ownership of the property from **Imani & Sons Limited** sometime in April, 2017 and that the Defendant was duly notified of the transaction. The **CW1** tendered in evidence as **Exhibit C2**, unregistered *Deed of Assignment* made on 11<sup>th</sup> April, 2017, between **Imani and Sons Nig. Ltd. (Assignor)**; and **Femi Morohundiya (Assignee)**, with respect to the said property. According to the

**CW1** (*paragraph 12* of his additional *Statement on Oath*), the said unregistered Deed of Assignment is tendered merely as evidence of payment of the sum of ~~N~~**420,000,000.00 (Four Hundred and Twenty Million Naira)** only by the Claimant to the said **Imani & Sons Nigeria Limited** as purchase price for the property.

The **CW1** further tendered in evidence as **Exhibit C3**, acknowledged copy of letter dated the same April 12, 2017, written by **Jide Adejana, Esq.**, of **Absolute Solicitors**, on behalf of the said **Imani and Sons Nig. Ltd.** to the Defendant to notify her that the property had been sold to the Claimant.

The Defendant admitted receiving the said letter and the **DW1** equally tendered in evidence as **Exhibit D1**, copy thereof.

The said letter, **Exhibit C3/D1**, reads in part as follows:

**“ATTENTION: MRS NDIDI BELLO**

**RE: NOTICE OF CHANGE OF OWNERSHIP OF  
15(30) MEDITERRANEAN STREET, IMANI ESTATE,  
MAITAMA, ABUJA.**

***We have the instruction of IMANI AND SONS  
NIGERIA LIMITED (hereinafter referred to as our  
‘Client’), to notify you that our client who is your  
Landlord and the owner of the above mentioned  
property has assigned and transferred all its right  
and interest in the said property to FEMI  
MOROHUNDIYA & CO.***

***IMANI & SONS NIGERIA LIMITED ceases to deal in  
any way with the afore-mentioned property. ...”***

From these pieces of documentary evidence, **Exhibits C2, C3 and D1** respectively, it is again firmly established that the Claimant acquired ownership of the property in issue and by extension inherited the Defendant as his tenant over the said property.

To further confirm the case of the Claimant that he acquired ownership of the property, the **DW1** testified that sometime in February, 2018 the Claimant offered the property to the Defendant for sale which resulted in exchange of correspondence between the two parties. He tendered in evidence as **Exhibits D3, D4, D5, D6** and **D7** respectively, such correspondence.

By **Exhibit D3**, dated 9<sup>th</sup> February, 2018, the Claimant, through his Agent, offered the property to the Defendant for sale at the sum of ₦550,000,000.00. The Defendant, with the letter, **Exhibit D4**, dated 15<sup>th</sup> February, 2018, made a counter-offer of the sum of ₦300,000,000.00 to purchase the property. The Claimant's Agent, by the letter, **Exhibit D5**, made a reduced offer of the sum of ₦500,000,000.00 to the Defendant; and by another letter dated 23<sup>rd</sup> May, 2018, tendered in evidence as **Exhibit P6**, the Claimant's Agent made a

final reduced offer of the sum of ₦430,000,000.00 to the Claimant for sale of the property.

By letter dated 25<sup>th</sup> May, 2018, **Exhibit D7**, the Defendant purportedly communicated her acceptance of the offer of the sum of ₦430,000,000.00 as the purchase price of the property.

Again, in his testimony under cross-examination, the **DW1** testified as follows:

***“The Claimant offered to sell the property to the Defendant. The Defendant accepted the offer. The Defendant accepted the offer because she knew by correspondence, that the Claimant owned the property.”***

From these pieces of evidence highlighted in the foregoing, I find as also firmly established that the Defendant acknowledged and recognized the

Claimant as the owner and her acquired landlord of the property in issue. I so hold.

The Defendant's active negotiation with the Claimant to purchase the property from him is no doubt a tacit acknowledgment and recognition of the Claimant as the owner of the property and by extension, her acquired landlord. I further so hold.

I noted the slant that the Defendant attempted to introduce to this case by denying the Claimant's claim that she was the tenant of the premises in issues in this case. She contended that the original ten (10) years lease agreement she entered into with **Imani & Sons Nigeria Limited**, in January, 2003, was on behalf of **BNatural Nigeria Limited**; and not in her personal capacity. Her witness however failed to tender the said Lease Agreement or any other document to show that the Claimant's predecessor in

title dealt with **BNatural Nigeria Limited** and not her, as the tenant of the premises in contest.

The Claimant further denied this assertion in his Reply to the Statement of Defence and Defence to Counter Claim. The **CW1**, who claimed to have been a staff of the Claimant's predecessor in title to the property, testified that when the Defendant entered into tenancy contract with **Imani & Sons** on 31<sup>st</sup> January, 2003, she never acted on behalf of **BNatural Nig. Ltd.**; and that **BNatural** was never a party to the contract from inception and that the Defendant never disclosed to **Imani & Sons** that she was an agent acting for **BNatural Nig. Ltd.**

Under cross-examination by the Defendant's learned counsel, the **CW1** further testified as follows:

*“I was a staff of Imani & Sons Limited when the Defendant was let into the property...”*

I have also noted the arguments of the Defendant's learned counsel that the correspondence between **Imani & Sons** and the Defendant were directed to the Defendant in her capacity as representative of **BNatural Nig. Ltd.**, being the Managing Director/CEO. This argument is however not supported by the evidence on record. I have examined the documents, **Exhibits C1** and **C3**, which were the only letters on record written by **Imani & Sons** to the Defendant. There is nowhere in the letters that the Defendant was addressed as representing **BNatural Nig. Ltd.**

Again, I have further examined all the letters tendered in evidence by the **DW1**, written by the Claimant to the Defendant, **Exhibits D3, D5** and **D6** respectively. Nowhere in any of these letters was the name of **BNatural Nig. Ltd.** was mentioned. The letters were addressed to the Defendant personally and there is no evidence on record that she protested



that she was not the tenant of the premises; or that she acted for **BNatural Nig. Ltd.**

The position of the law, as provided by the provision of **s. 133(2)** of the **Evidence Act**, is that the onus of proof is on the party that seeks to disprove a fact that appears established if no other evidence is adduced. This position is further expatiated by the Supreme Court in Nigerian Maritime Services Limited Vs. Afolabi [1978] 2 SC 79, where it was held as follows:

***“In civil cases the onus of proof is not static, it shifts between the Plaintiff and the Defendant, depending on the case and the evidence offered by either party. In civil cases, where proof is on preponderance of evidence, a party cannot safely decline to offer evidence where, on the evidence led a rebuttal of such evidence is required.”***

See also A-G., Lagos State Vs. Purification Tech. (Nig.) Ltd. [2003] 16 NWLR (Pt. 845) 312.

In the present case, the evidence before the Court is that the Defendant is the tenant with whom the Claimant and his predecessor in title dealt with respect to the property in issue. However, if the Defendant wanted the Court to believe otherwise, by contending that it was **BNatural** that was the tenant of the Claimant's predecessor in title, she ought to produce such evidence in rebuttal in that regard. Having not adduced any such evidence to dislodge the Claimant's contention that she was and is the tenant of the demised premises, that fact would be and is hereby resolved against the Defendant. I so hold.

Without any further ado therefore, I resolve issue (one), as set out, in the affirmative, to the extent that the Defendant is the Claimant's acquired or inherited tenant with respect of the demised premises in issue.

## **ISSUE TWO:**

Having found that the Claimant, upon purchasing the demised premises from **Imani & Sons Nig. Ltd.**, in April, 2017, as evidenced by **Exhibits C2** and **C3** respectively, inherited the Defendant as his tenant of the demised premises, the questions that follow for resolution is as to whether or not the Claimant determined the tenancy by due process of law and if so, whether or not he is entitled to possession of the premises and the other ancillary reliefs claimed.

The Claimant's learned counsel had argued that the effect of the purchase of the demised premises by the Claimant from **Imani & Sons. Ltd.** is that all the appurtenances, rights, obligations, duties and liabilities associated with the property passed to the Claimant as the new owner. This argument finds the blessing of the Court of Appeal in the decision of *Hadejia Vs. Ladan* 2018 LPELR-3321(CA), where it was held as follows:

***“Thus, if there is a subsisting tenancy in the property at the time of sale, the vendor will inherit the tenancy along with the property and take over the tenancy as the landlord with the attendant rights and he cannot eject the tenant without a proper determination of the tenancy - Alabi Vs. Oloya [2001] 6 NWLR (Pt. 708) 37; Farajoye Vs. Hassan [2006] 16 NWLR (Pt. 1006) 463. By the purchase therefore, the third Respondent stepped into the shoes of the Bauchi State Government and took over whatever relationship existed between the Bauchi State Government and the late father of the Appellant.”***

In the present case, the testimony of the **CW1** is that prior to the acquisition of the property by the Claimant, the Defendant was a yearly tenant of **Imani & Sons Nig. Ltd.**, the former owners of the property, paying annual rent of ₦8,000,000.00. The **CW1** further testified that the anniversary of the tenancy, right from inception, in 2003, when the

Claimant's predecessor in title granted the Defendant an initial ten (10) year lease, was 1<sup>st</sup> of January; and that the Defendant converted to an annual tenant as from 1<sup>st</sup> January, 2012, when the ten year lease expired.

The witness testified further that the former owners of the property issued the Defendant with six (6) months quit notice on 30<sup>th</sup> June, 2016. He tendered in evidence as **Exhibit C1**, copy of the said quit notice, issued at the instance of **Imani & Sons Ltd.** by her Solicitor, **Jide Adejana, Esq.** According to **Exhibit C1**, the notice shall expire by 31<sup>st</sup> December, 2016.

The **CW1** further testified that the Defendant stopped paying rent on the premises as from the tenancy year that commenced on 1<sup>st</sup> January, 2017, right through the period the ownership of the property changed hands and up to the time of filing the present suit.

The **CW1** testified further that the Claimant caused seven days notice of owner's intention to apply to recover premises on the Defendant on 19<sup>th</sup> January, 2018.

Giving further evidence in support of the Claimant's case, **Mr. Nura Haruna**, the bailiff of the Chief Magistrate's Court, Zone 2, Wuse, Abuja, testified on *subpoena* that the Claimant's Solicitor employed him to serve the said notice on the Defendant; that he attempted personal service twice and that when these attempts failed, he had to paste the notice at the entrance door of the apartment, after which he deposed to affidavit of service. He tendered in evidence as **Exhibits C4** and **C4A** respectively, the Certificate of Service indicating that the notice was pasted at the premises of the property in issue on 19<sup>th</sup> January, 2018; and copy of the notice of intention, issued by the Claimant, **Femi**

**Morohundiya**, on 19<sup>th</sup> January, 2018, for service on the Defendant.

In his testimony, the Defendant's witness, **DW1** admitted substantially the testimony of the **CW1**, as to the anniversary of the yearly tenancy; that Imani & Sons Ltd. caused the notice to quit to be served on the Defendant; and that it was the Claimant that caused the seven (7) days notice of intention to be served on the Defendant.

The Defendant did not also deny that she stopped paying rent on the premises as from 1<sup>st</sup> January, 2017.

The Defendant however introduced another twist to the case when she contended that the Claimant offered the property to her for sale. I had earlier on made reference to the exchange of correspondence between the two parties with respect to the said

offer, with respect to which the **DW1** tendered the letters **Exhibits D3, D4, D5, D6** and **D7** respectively.

The sum total of the testimony of the **DW1** in this regard is that after the issuance of the seven (7) days notice of intention, the Claimant, by letter dated 9<sup>th</sup> February, 2018, offered the property to her for sale; after which they entered into negotiations. At the end of the day, according to the **DW1**, the Defendant, *vide* **Exhibit D7**, accepted the Claimant's final offer of the sum of ~~₦~~430,000,000.00 to sell the property.

However, in his testimony under cross-examination the **DW1** confirmed that the Defendant did not make any payment for the property.

In turn the Claimant shed more light on the issue of the purported offer of the property for sale to the Defendant. The **CW1** testified that the issue of sale of the property came up after the Claimant had



already commenced the instant suit on 5<sup>th</sup> February, 2018; when the Defendant approached the Claimant for out of Court settlement; that the Defendant pleaded with the Claimant to sell the property to her as part of the out of Court settlement proposals; which the latter agreed to consider.

The Claimant denied that the Defendant accepted the offer of ₦430,000,000.00 made to her and that the said letter of acceptance, purportedly written by the Defendant on 25<sup>th</sup> May, 2018, was an afterthought as the same was never received by the Claimant or his agent. I make reference to the depositions in *paragraph 15(a), (d) and 17* of the additional *Statement on Oath* of the **CW1** made pursuant to the facts pleaded in *paragraphs 13(a), (d) and 15* of the *Claimant's Reply to Statement of Defence and Defence to Counter Claim.*

The questions that arise here are whether or not there was a valid contract between the Claimant and the Defendant for the sale of the demised premises and if so, whether or not the contract had not nullified the purported issuance of seven (7) days notice of intention to recover the premises from the Claimant?

The position of the law is that where it is alleged that a document was delivered to a person who denies receiving such document, proof of delivery to such person can be established by: (a) dispatch book indicating receipt; or (b) evidence of dispatch by registered post; or (c) evidence of witness, credible enough that the person was served with the document. See Agbaje Vs. Fashola [2008] 6 NWLR (Pt. 1082) 90 @ 142.

This principle of evidence was further stressed by the Court of Appeal in Nweledim Vs. Uduma [1995] 6

NWLR (Pt. 402) 385 @ 394, where it was held as follows:

*“...in the absence of a dispatch book indicating its receipt, or evidence of having sent it by registered post, the probative value of such document will be worthless unless there are witnesses, credible enough to testify that the Defendant was served with it.”*

In the circumstances of this case, it becomes incumbent on the Defendant to offer credible evidence of delivery of **Exhibit D7** to the Claimant once he denied receiving the same. However, no such evidence was adduced. The letter in question, **Exhibit D7**, is in the original form and there is nothing in its face to show that it was acknowledged by the Claimant or anyone for that matter.

Whilst answering questions under cross-examination by the Claimant’s learned counsel, the **DW1** stated as follows:

***“It is correct that all letters written to the Defendant by the Claimant were acknowledged. I also confirm that all the letters written by the Defendant to the Claimant were acknowledged. I can see Exhibit D7. It was the last letter written by the Defendant to the Claimant to offer to purchase the property. The letter was received by the Claimant. There is no endorsement of acknowledgment on Exhibit D7 shown to me.”***

The evidence elicited from the **DW1** under cross-examination further exposes the Defendant’s inability to establish that the letter, **Exhibit D7** was dispatched to the Claimant and that he received it.

Following the decision in *Nweledim Vs. Uduma* (*supra*), I must hold, on the basis of the evidence evaluated in the foregoing, that the letter of acceptance of offer to sell the demised, purportedly written by the Defendant on 25<sup>th</sup> May, 2018, to the

Claimant, is worthless, lacks credibility; and as such shall be accorded no probative value whatsoever.

This being the case, it then becomes clear that the Defendant failed to accept the offer made to her by the Claimant to purchase the property in issue. I so hold.

It is an elementary principle of the law of contract that in order for an acceptance of an offer to be valid, it must be communicated in unequivocal terms to the offeror; and where there is no valid acceptance, it cannot be said that there has been a valid contract. See F. G. N. Vs. Zebra Energy Limited [2002] 18 NWLR (Pt. 798) 162; OMPADEC Vs. Dalex (Nigeria) Limited [2002] 12 NWLR (Pt. 781) 384.

Even if it is accepted, for academic discourse only, that the letter of acceptance was valid, the Defendant still failed to offer consideration by failing to make any

payment for the land, as her witness rightly admitted under cross-examination by the Claimant's learned counsel.

The law is settled, as the Claimant's learned counsel correctly contended, that in order for a contract to be valid in law, the five known ingredients thereof, namely, offer, acceptance, consideration, intention to create legal relations and capacity to contract, must be present; and that these five ingredients are autonomous units in the sense that a contract cannot be formed if any of them is absent. See *Orient Bank of Nigeria Plc Vs. Bilante International Limited* [1997] 8 NWLR (Pt. 515) 37; *Omega Bank Nigeria Plc Vs. O. B. C. Limited* [2005] All FWLR (Pt. 249) 1964.

In the instance case, as the Claimant's learned counsel rightly submitted, the ingredients of acceptance and consideration have been shown to be lacking in the purported contract between the Claimant and the

Defendant for the sale of the demised premises; and as such it cannot be said that the purported contract was valid. I so hold.

It therefore follows that the *status quo* as of the time the Claimant served the Defendant with the seven (7) days notice of intention, remains in force between the parties, considering that both parties were unable to come to an agreement for the sale of the demised premises to the Defendant. I further so hold.

Now, on the issue as to whether the notices served on the Defendant were valid in law to establish the Claimant's claim for possession, the following facts have been well established, as I had earlier on found:

1. That the existing tenancy is a yearly tenancy.
2. That the anniversary of the tenancy is 1<sup>st</sup> January of every year, as from 2012, when

the 10 year lease initially granted to the Defendant by the Claimant's predecessor in title lapsed.

3. That the Defendant pays the sum of ~~₦~~8,000,000.00 rent on the demised premises annually.
4. That **Imani and Sons Ltd.**, the Claimant's predecessor in title issued and served the Defendant with 6 months notice to quit, **Exhibit C1**, on 30 June, 2016.
5. That upon expiration of **Exhibit C1** on 31<sup>st</sup> December, 2016, the Claimant served seven (7) days notice of owner's intention to apply to recover possession, **Exhibit C4A/D2** on the Defendant on 18<sup>th</sup> January, 2018.



6. That the Defendant admitted receiving the two notices.
7. That the Defendant has not paid any rent on the premises as from 1<sup>st</sup> January, 2017 up to date.
8. That the Defendant has refused to deliver up possession of the demised premises.

Now, on the principles of the authority of Hadejia Vs. Ladan (*supra*), the Claimant having inherited the Defendant with attendant rights and obligations of the Defendant, it follows that the notice to quit issued by the Claimant's predecessor in title remained valid and in force even after the property had been sold to the Claimant and there was no need for the Claimant to have issued a fresh notice to quit to the Defendant; more so when there is no evidence that the Defendant paid any more rents after the issuance

of the notice to quit. As such, my finding is that the Defendant's tenancy on the demised premises was validly determined in accordance with the provision of **s. 8 of the Recovery of Premises Act**. I so hold.

I further hold that by issuing and serving the Defendant with the seven (7) days notice of owner's intention to apply to recover possession in compliance with the provision of **s. 7 of Recovery of Premises Act**, the Claimant has fulfilled the condition precedent to commencing the instant action for recovery of premises, as rightly argued by his learned counsel.

The Claimant has claimed from the Defendant *mesne profit* on the demised premises at the rate of ~~₦~~8,666,666.7k from 1<sup>st</sup> January, 2017 to 31<sup>st</sup> January, 2018; and subsequently at the rate of ~~₦~~666,666.07 from 1<sup>st</sup> February, 2018 till possession is given up.

A claim for *mesne* profits is usually awarded in place of rent where the tenant remains in possession after the tenancy agreement has ran out or been duly determined. The dichotomy between arrears of rent and *mesne* profits was explained in simple terms by **Oputa, JSC** (now late) in *Debs Limited Vs. Cenico Limited* [1986] 3 NWLR (Pt. 32) 844, where the erudite law Justice held as follows:

***“Rent is operative during the subsistence of the tenancy, while mesne profits start to run when the tenancy expires and the tenant holds over.”***

In the instant case, the Defendant’s tenancy on the demised premises expired on 31<sup>st</sup> December, 2016. The uncontroverted evidence is also that she has not paid any rent since the expiration of the tenancy, of the sum of ₦8,000,000.00 per annum. As such, I hold that the Claimant is rightly entitled to *mesne* profit, in the manner as calculated in *paragraph 12* of the **CW1’s Statement on Oath**.

Before I conclude on the determination of issue (two) as set out, I have noted the arguments of the Defendant's learned counsel that the **CW1** be tagged as a tainted witness merely because he is an employee of the Claimant and had also previously worked in the employment of the Claimant's predecessor in title.

Perhaps it is the testimony of the **CW1** under cross-examination by the Defendant's learned counsel that precipitated learned counsel's submission that he is a paid witness whose testimony ought not to be believed by the Court. The testimony is reproduced as follows:

***"I work as Property Manager for Femi Morohundiya. Before then, I was a staff of Imani & Sons Ltd. I started working for the Claimant in January, 2017. I receive commissions from the Claimant; not salaries. ...***

*The Claimant has not paid me anything to attend Court today; but he will pay my commission when the suit is done with."*

I fail to see any aspect of the testimony of the **CW1**, under cross-examination that warrants him to be labelled a paid witness or a tainted witness, as the Defendant's learned counsel would want the Court to find.

As learned Claimant's counsel rightly submitted, there is nothing in the testimony of the **CW1** to suggest that he was paid by the Claimant for the purpose of giving false testimony in this suit.

It is also my view that no one else, other than the **CW1**, who understood the history of the case, having been in the employment of the Claimant's predecessor in title from the inception of her relationship with the Defendant, up to date, was better qualified to testify in this suit.

More importantly, this suit is largely based on documentary evidence, most of which were tendered by the Defendant's witness. And again, the oral testimony of the **CW1** has not been shown to be inconsistent or incredible throughout, for the Court to ignore same.

I therefore hold that the arguments of the Defendant's learned counsel that the **CW1** is a paid witness lacks substance and is accordingly disregarded.

On this note I resolve issue (two), as set out, in favour of the Claimant.

In conclusion, I find merit in the Claimant's claim and the same hereby succeeds in substance. For avoidance of doubts and abundance of clarity, judgment is hereby entered in favour of the Claimant against the Defendant upon terms set out as follows:

- 1. The Defendant is hereby ordered, within thirty (30) days from today, to deliver up to the Claimant, possession of the premises being 5 bedroom duplex with appurtenances lying and situate at Block 15, (30) Mediterranean Street, Imani Estate, Maitama, Abuja.**
  
- 2. The Defendant is hereby further ordered to pay mesne profit on the said premises to the Claimant in the sum of ₦8,666,666.07 (Eight Million, Six Hundred and Sixty Six Thousand, Six Hundred and Sixty Six Naira and Seven Kobo) only, from 01/01/2017 to 31/01/2018.**
  
- 3. The Defendant is hereby further ordered to pay further mesne profit on the said premises to the Claimant in the sum of ₦666,666.07 (Six Hundred and Sixty Six Thousand, Six Hundred**

*and Sixty Six Naira and Seven Kobo) only, per month from 01/02/2018 until possession is finally given up.*

- 4. The Defendant shall pay the sum in (2) above at the rate of 10% per annum from the date of this judgment until the same is finally liquidated.*
- 5. I award costs of the Claimant's suit, in the sum of ₦250,000.00 (Two Hundred and Fifty Thousand Naira) only, in favour of the Claimant against the Defendant.*

## **DETERMINATION OF THE COUNTER CLAIM**

### **ISSUE THREE:**

Issue (three) as set out is to determine the substance of the Defendant's Counter Claim.



I reckon that the issues raised by the Defendant in her Counter Claim, as to the validity of the notices served on her by the Claimant for the recovery of the demised premises; and as to whether there was a binding contract between the parties for the sale of the demised premises to the Defendant have been exhaustively dealt with and decided upon in the main claim. The two issues were clearly resolved against the Defendant. The Court had held that the Defendant failed to establish that she delivered the letter, **Exhibit D7**, by which she claimed to have accepted the Claimant's offer to sell the property to her for ₦430,000,000.00. The Court further resolved that the two notices, **Exhibits C1** and **C4A/D2**, served on the Defendant for the recovery of the demised premises were proper and in accordance with the provisions of **Ss. 7 and 8** of the **Recovery of Premises Act**. I hereby adopt the fuller determination of the Court with respect to these two

issues in holding that the Defendant's Counter Claim lacked in merit and in substance. Consequently the Counter Claim shall be and is hereby accordingly dismissed.

**OLUKAYODE A. ADENIYI**  
**(Presiding Judge)**  
**28/05/2020**

**Legal representation:**

**Chidi Nwankwo, Esq.** – (with **C. K. Orji, Esq.; S. O. Okoye, Esq. & Lilian Nwokolo (Miss)**) – *for the Claimant*

**Ejike Opara, Esq.** – (with **A. O. Ayeni, Esq.; Okechukwu Osuwa, Esq & Bolaji Samson, Esq.**) – *for the Defendant/Counter-Claimant*