IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON MONDAY 22ND DAY OF JUNE 2020
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 14 APO - ABUJA

SUIT NO. CV/1510/16

BETWEEN:

SENATOR JOHN JAMES AKPANUDOEDEHE .. ..CLAIMANT

AND

GEORGE A. CHIGBU .. .. DEFENDANT

JUDGMENT

The Claimant was a onetime Minister and Senator of the Federal Republic of Nigeria. At the material time, he was also a businessman. However, this suit had no connection with his public service but with relation to the tenancy relationship he claimed to have had with the Defendant, who himself, is a legal practitioner, with respect to his property situate at ***Road 13, 5, off***

1st Avenue, Gwarimpa Estate, Gwarimpa, Abuja, comprising of 5 bedroom detached duplex with a 3 bedroom boys quarters. According to the Claimant, he let the premises to the Defendant strictly for residential purpose; that the landlord and tenant relationship between the two parties lasted from 01/11/2009 up until 14/12/2015, when he effectively recovered possession of the premises from Defendant, after securing judgment for possession from the District Court of the FCT.

The case of the Claimant is further that the Defendant, during the pendency of the tenancy, converted the premises to a business premises contrary to the tenor of the tenancy agreement executed between the two parties; and in the process altered the original structures of the property; and that when the premises was recovered from the Defendant, he had to engage the services

of estate valuers to put value to the damages done to the property by the Defendant.

The Claimant further contended that the Defendant merely paid a fraction of the rent for the tenancy year of 2012/2013 and paid no further rents on the premises up until he recovered possession of the same from the Defendant in December, 2015.

It is on the basis of the foregoing narration that the Claimant instituted the instant action, *vide* *Writ of Summons and Statement of Claim* filed in this Court on 18/04/2016, wherein he claimed against the Defendant the reliefs set out as follows:

1. ***A declaration that the Plaintiff is entitled to be paid the sum of ₦4,500,000.00 (Four Million, Five Hundred Thousand Naira) by the Defendant, being the outstanding rent balance due to the Plaintiff for the use of the Plaintiff's property, a five (5) bedroom detached Duplex with a 3 Bedroom Boys***

Quarter for a tenancy term from 1st November, 2012 to 31st October, 2013.

2. ***A declaration that the Plaintiff is entitled to be paid the sum of ₦12,900,258.00 (Twelve Million, Nine Hundred Thousand, Two Hundred and Fifty Eight Naira) by the Defendant, being mesne profit due to the Plaintiff from 1st day of November, 2013 until 14th day of December, 2015 that the Plaintiff took possession of his property, a Five (5) Bedroom detached Duplex with a 3 Bedroom Boys Quarter.***

3. ***A declaration that the Plaintiff is entitled to be paid the sum of ₦12,230,000.00 (Twelve Million, Two Hundred and Thirty Thousand Naira) by the Defendant, being damage value caused by the Defendant for the repair and renovation of the Plaintiff's property, Five (5) Bedroom detached Duplex with a 3 Bedroom Boys Quarter.***

4. ***An order directing the Defendant to be pay the sum of ₦4,500,000.00 (Four Million, Five Hundred***

Thousand Naira) to the Plaintiff, being the outstanding rent balance due to the Plaintiff for the use of the Plaintiff's property, a five (5) Bedroom detached Duplex with a 3 Bedroom Boys Quarter for a tenancy term from November, 2012 to 31st December, 2013.

5. ***An order directing the Defendant to pay the sum of ₦12,230,000.00 (Twelve Million, Two Hundred and Thirty Thousand Naira) to the Plaintiff, being mesne profit due to the Plaintiff from 1st day of November, 2013 until 14th day of December, 2015 that the Plaintiff took possession of his property, a Five (5) Bedroom detached Duplex with a 3 Bedroom Boys Quarter.***

6. ***An order directing the Defendant to pay the sum of ₦12,230,000.00 (Twelve Million, Two Hundred and Thirty Thousand Naira) to the Plaintiff being damage value caused by the Defendant for the repair and renovation of the Plaintiff's property,***

Five (5) Bedroom detached Duplex with a 3 Bedroom Boys Quarter.

7. ***An order directing the Defendant to pay the Plaintiff 10% of the judgment sum until judgment debt is liquidated.***

8. ***And for such other orders as this Honourable Court will deem fit to make in the circumstances of this case.***

The Defendant joined issues with the Claimant. His operative *Amended Statement of Defence* was filed on 08/10/2018. The Defendant's main contention is that, even though it was true that he entered into a tenancy relationship with the Claimant, he merely did so, on behalf of and as agent for **WSPL Trading Company Limited,**[1] of which he was a Director at the material time; and that as such the Claimant's tenancy relationship was with the company and not

[1] Hereinafter referred to as WSPL or "the Company"

with him as an individual; and that on that basis the company was the proper party that ought to be sued as the Defendant in the instant action.

The Defendant went on to further contend that, contrary to the claim of the Claimant, the premises were let to the company for business purpose and that no formal tenancy agreement was executed between the parties. He further contended that unknown to him that the Claimant had no approval of the relevant authorities to use the premises for business purposes, and after he had erected additional structures thereon upon the understanding he had with the Claimant, he began to receive notices from the authorities for contravention of the approved use of the premises as residential premises only; that in the process, the premises was severally sealed up by the authorities and the company incurred huge financial losses as a result; that the company was again slammed with charges for land

use contravention, which the Claimant promised to rectify but failed to do.

The Defendant's case is further that sometime in April, 2014, the Federal Housing Authority, at the instigation of the Claimant, carried out enforcement action against the company on the premises, in the process of which her belongings were damaged and that the additional structures he erected on the premises were destroyed; that it was this action that led to the company vacating the premises in April, 2014. The Defendant denied knowledge of the purported Court action taken on behalf of the Claimant to recover possession of the premises; and that the company had long vacated the premises prior to the institution of the said Court action. He also denied receiving letters purportedly written to him by the Claimant's Solicitors or that the company caused any damage to the demised premises.

Both parties adduced evidence to support their claim and defence respectively. In proof of his case, the Claimant testified in person and called (2) other witnesses. He adopted the *Statements on Oath* to which he deposed and tendered six (6) documents in evidence. **Alhassan Baba,** a *subpoenaed* witness testified as the **PW1**. He tendered two (2) documents in evidence in further support of the Claimant's case.

Sedik Mohammed, testified as **PW2.** He adopted his witness deposition and tendered three (3) documents in evidence. The Claimant and his witnesses were duly cross-examined by the Defendant's learned counsel.

For the defence, the Defendant testified in person and called no other witness(es). He adopted his *Statement on Oath* and further tendered four (4) documents in evidence as exhibits. He was equally

subjected to cross-examination by the Claimant's learned counsel.

At the conclusion of plenary trial, parties filed and exchanged written final addresses in the manner as prescribed by the **Rules** of this Court. In the final address filed on behalf of the Defendant on 09/12/2019, his learned counsel, **Godwin N. Chigbu, Esq.**, formulated two (2) issues as having arisen for determination in this suit, namely:

1. ***Whether there is privity of contract between the Claimant and the Defendant in the circumstances of this case.***

   OR whether the Claimant has proved that the Defendant herein was or has ever, as a person, been a tenant of the Claimant with respect to the Claimant's property (Five Bedroom detached duplex with a 3 Bedroom Boys Quarters) situate at Road 13, 5, Off 1st Avenue, Gwarinpa Estate, Abuja.

2. ***Whether the Claimant has proved his entitlement to the reliefs claimed herein.***

In turn, the Claimant, through his learned counsel, **Henry O. Chichi, Esq.,** filed his final address on 04/03/2019, wherein he also formulated two (2) issues as having arisen for determination in this suit, namely:

1. ***Whether the Defendant can hide his liability to the Claimant under the doctrine of privity of contract and/or corporate personality.***

2. ***Whether the Claimant is not entitled to Judgment, having regard to the evidence before the Court.***

The Defendant's learned counsel further filed a Reply on points of law to the Claimant's final address on 13/03/2020.

The issues formulated by learned counsel on both side are similar and properly captured the field of dispute in this suit. As such, I shall proceed to

determine the suit on those broad issues as to whether or not the Defendant was the proper party who ought to have been sued in this case; and if so, whether the Claimant established his claim before the Court.

RESOLUTION OF ISSUES

ISSUE ONE:

IS THE DEFENDANT THE PROPER PARTY TO BE SUED IN THIS ACTION?

It is not in dispute between the parties that the Claimant was the landlord of the premises in issue at all material times.[2] It is also not in dispute that the Claimant let out the property at the material time which tenancy commenced from 01/11/2009.[3]

The law is trite as contended by the Defendant's learned counsel, and as such the issue needs not be

[2] The Defendant did not deny the averment in paragraph 2 of the Statement of Claim in his Statement of Defence.
[3] See the averments in paragraph 4 of the Statement of Claim and paragraph 10 of the Statement of Defence.

belaboured that a corporate entity, as **WSPL** in the instant case, is an artificial legal entity which is separate and distinct from its shareholders and directors, or from the members and organs of the company; and that the company, not being a human being, acts through its human agents.[4]

In that regard, it is well understood, as correctly contended by the Defendant's learned counsel, that the Defendant, as Director of **WSPL**, who enjoys a separate and distinct legal personality from the company cannot, generally, be held liable for the acts and omissions of the company.[5]

On the basis of the foregoing therefore, the basis of the focal controversy between the parties is clearly understood, as to who, as between the Defendant in his personal capacity; or his company, **WSPL**, was the proper party the Claimant dealt with as his tenant

[4] Vibelko (Nig.) Ltd. Vs. NDIC [2006] 12 NWLR (Pt. 994) 221 @ 282-283
[5] Armah Vs. Horsfall [2017] All FWLR (Pt. 912) 709 @ 722, cited by the Defendant's learned counsel.

with respect to the demised premises and who, invariably must be answerable for this suit.

It is perhaps an elementary principle of evidence, as rightly submitted by learned counsel on both sides, that the burden lies on the party that asserts a fact to prove the correctness of his assertion.[6] The Claimant's case is that he let his property to the Defendant. He made no reference whatsoever to the company in his *Statement of Claim*. It was however the Defendant who introduced the company to the case, by contending that the property was let to the company and not to him in person. As such, I agree with the Claimant's learned counsel that the onus of proof must shift to the Defendant to substantiate his defence by credible evidence that the Claimant let the premises to **WSPL** and not him. I so hold.

[6] See **s. 134(1)** of the **Evidence Act**. See also Bawa Vs. Aliyu [2015] 3 NWLR (Pt. 1447) 523; FGN Vs. Interstella Communications Ltd. [2015] 9 NWLR (Pt. 1463) 1 @ 40.

The Claimant testified that a formal tenancy agreement, which could have clearly established the real tenant, was executed between the parties but failed to tender same in evidence. Under cross-examination by the Defendant's learned counsel, he merely re-asserted his averment in his *Reply* to the *Statement of Defence*[7] that he sent the tenancy agreement to the Defendant for execution but that he never returned the same to him.

Now, the Defendant on the other hand tendered in evidence, letter dated 13th July, 2009, written by one **Mr. Richard Anosike** of ***Era Properties Services***[8] by which he claimed that the property was purportedly introduced to the company on behalf of the Claimant.[9]

[7] Paragraph 6 of the Reply to the Statement of Defence.
[8] **Exhibit D1**.
[9] Paragraph 9 of the Defendant's Statement on Oath

The Claimant denied knowledge of the letter or that it was written at his instance.[10] Even though he did not otherwise state in his pleadings how the property was introduced to the Defendant; however, whilst being cross-examined by the Defendant's learned counsel, he testified as follows:

> ***"I had no relationship with the Defendant before 1st November, 2009. He was not my friend. I did not know him before that date. I did not personally inform the Defendant that the property was letting. There was a general notice placed on the property that it was for let. …. The Defendant was not introduced to me by anyone. He walked into my house having seen the notice placed on the property and the contact phone number."***

The Court finds here that even though parties joined issues as to how the Defendant became aware that the property was available for letting, the Claimant

[10] Paragraph 2 of the Reply to the Statement of Defence.

however failed to plead how he met the Defendant, other than denying that he did not engage services of any agent to let out the property. The implication therefore is that the Claimant's testimony, under cross-examination, that he placed a general notice on the property and that the Defendant walked into his house to make enquiries about the property amounted to evidence on facts not pleaded either by him or the Defendant and as such will go to no issue. The principle was properly captured by the Court of appeal in *Stanbic IBTC Bank Vs. Longterm Global Capital Ltd*.[11], where it was held as follows:

> ***"In law, evidence elicited under cross examination but not on facts pleaded does not enjoy a higher status than evidence in chief given on facts not pleaded merely because it was obtained under cross-examination as they both go to no issue. Thus, it is only where the evidence elicited under cross***

[11] [2018] LPELR-2231(CA). See also Daggash Vs. Bulama [2004] 14 NWLR (Pt. 892) 144 @ 241.

examination is on facts pleaded either by the party being cross examined or by the party cross examining that such evidence is good evidence for the cross examining party if it is in support of his case."

I had also examined the letters, **Exhibits P1 – P4** respectively. They were photocopies of letters purportedly written by the Claimant's Solicitors to the Defendant at the material time. The letters were addressed to the Defendant in person; and as such, on their face values, would have been sufficient evidence from which the Court would have drawn reasonable inference that the tenancy in question was between the Claimant and the Defendant in person, and not with the company. However, the Defendant denied receipt of any of the letters;[12] thereby making it imperative for the Claimant to

[12] See paragraph 25 of the Amended Statement of Defence and paragraph 26 of the Defendant's Statement on Oath.

prove that the letters were delivered to the Defendant.

Under cross-examination by the Defendant's learned counsel, the Claimant admitted that he was not the one that delivered the letters to the Defendant in person.

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*.[13]

[13] [2008] 6 NWLR (Pt. 1082) 90 @ 142.

This principle of evidence was further stressed by the Court of Appeal in *Nweledim Vs. Uduma*,[14] 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 instant case, there is nothing on the faces of the letters that they were received or acknowledged by the Defendant or anyone else for that matter. Mere tendering copy of a letter without more, cannot be sufficient evidence that the same is delivered, more so when the addressee denied receiving the letter. It is also of no moment that the Claimant served notice to produce the originals in his *Statement of Claim*; since proof of delivery is the basis of the demand for

[14] [1995] 6 NWLR (Pt. 402) 385 @ 394

the original. In the circumstances therefore, the Court cannot accord the said letters any probative value, whatsoever. The letters, **Exhibits P1 – P4** must be viewed as if they were non-existent and as such are hereby accordingly disregarded, in form and in content.

As things stand, although the Claimant denied knowledge of the letter, **Exhibit D1**, it however remains the only valid and credible evidence on record that could throw some form of light to the enquiry as to how the Defendant became aware of the availability of the property; and whether or not the Claimant dealt with the Defendant as his tenant or with **WSPL**.

The letter was addressed to "**Barr. George A. Chigbu,**" the Defendant in this case. It is not indicated in the letter that it was addressed to him in his capacity as a Director of **WSPL**. By my reckoning,

the inclusion of ***"WSPL TRADING COMPANY LIMITED"*** on the letter, is only to indicate where "**Barr. George A. Chigbu"** could be found. In other words, the inclusion of the name of the company on the letter is meant to indicate the address of the Defendant. I so hold.

I have also examined the content of the letter. There is nothing therein to indicate or suggest categorically that the offer of the property was made to the company and not the Defendant in person. I so hold.

The Court is mindful that the Claimant on his own did not adduce any tangible evidence that the tenancy relationship he had with respect to the property in question at the material time was with the Defendant and not his company. However, on the premises of the fact that the onus of proof is on the Defendant to prove that **WSPL** was the Claimant's tenant, which onus he has not creditably discharged, the Court must

find and hold that the Defendant is properly sued as the proper party on record in this suit.

Again, it is proper to give consideration to the judgment of the District Court of the FCT contained in **Exhibit P6,** tendered in evidence by the Claimant. The evidence of the Claimant is that he authorized his agent, **Sadiq Mohammed,** *vide* the letter, **Exhibit P5,** to take over management of the property; and that the said **Sadiq Mohammed,** who testified as **PW2,** took out an action against the Defendant at the District Court of the FCT to recover possession of the premises at the material time.

I must note here that it is not the duty of this Court to determine the validity of the Court judgment or to enquire as to whether or not proper legal course was followed in securing the judgment. This Court lacks the jurisdiction to entertain such questions in the present action. The focal issue here is that the action

was between the Claimant's agent and the Defendant, **George A. Chigbu**. The Defendant in that action was not **WSPL**. This thus lends more credence to the claim of the Claimant that he dealt with the Defendant in person and for himself throughout the tenancy relationship between them; and not with **WSPL**. The Court must therefore accept the judgment, **Exhibit P6**, reflecting the names of the parties in the action, as further evidence that the tenancy relationship was properly between the Claimant and the Defendant.

On the basis of the foregoing analysis therefore, I hold that the preponderance of evidence on record establishes that the tenancy relationship with respect to the property in issue is between the Claimant and the Defendant. There is nothing on the record to suggest that the Claimant dealt with the Defendant as agent of **WSPL** throughout the tenancy relationship between them; or that the Claimant knew that it was

the company that was his tenant, as contended by the Defendant. As such, I further re-affirm that the Defendant is the proper party to be sued in this action and on that ground the action is proper and competent before the Court. If for anything, the doctrine of privity of contract canvassed by the Defendant's learned counsel, supports the case of the Claimant. I so hold.

In the same token, I must also note that the principle of lifting the veil canvassed by the Claimant's learned counsel, is not applicable in the instant case in that the act of the company which will compel the Court to lift its veil must be criminal in nature, for instance, fraud. See *Alade V. ALIC (Nig.) Ltd. & Anor*.[15] The claims of the Claimant in this suit are strictly recovery of arrears of rent/mesne profits and damages. As such, even if WSPL had been the tenant

[15] [2010] 19 NWLR (Pt. 1226). See also Emco & Partners Ltd. & Ors Vs. Dorbeen Nigeria (Ltd.) & Anor [2017] LPELR-43453(CA), which elaborates on the circumstances under which the Court can lift the corporate veil of a company to hold her members liable for her acts and conducts.

of the Claimant, the doctrine of lifting the veil cannot apply in the circumstances of this case to drag the Defendant therein. I so hold.

On the basis of the foregoing analysis therefore, I resolve issue one in favour of the Claimant.

ISSUE TWO:

In determining whether or not the Claimant has satisfactorily established entitlement to the reliefs he claimed in this action, it is imperative to interrogative some relevant sub-issues on the basis of the evidence on record.

WAS THE PROPERTY LET FOR RESIDENTIAL OR COMMERCIAL PURPOSE?

It is not in question that from its description, the property was designed as residential premises. However, the two parties gave divergent evidence as to the purpose for which the Claimant let the

property to the Defendant. According to the Claimant, he let the property to the Defendant for residential purpose only and that when, sometime in 2011, the Defendant approached him to obtain the original title of the property to enable him effect the change of purpose of use of the property to commercial, he refused; and that nevertheless, the Defendant still went ahead to erect several structures on the property, including locked-up shops, which he let to members of the public.[16]

In his testimony, the Defendant on the other hand, stated that the demised premises was let for business or commercial purposes and that this fact is reflected in the letter, **Exhibit D1**.[17]

Now, the relevant portion of **Exhibit D1** reads as follows:

[16] See paragraphs 5, 14 and 16 of the Claimant's Statement on Oath of 18/04/2016.
[17] See paragraph 12 of the Defendant's Statement on Oath

"The property is well suited for both business and, or residential purpose.

We are offering it for residential purpose at ₦3,500,000 (three million and five hundred thousand naira only) for initial payment of two years….

If the rent/or lease is for business purpose, the offer is for ₦4,000,000 (four million naira only) with two years initial payment…"

The Defendant, further referring to **Exhibit D1**, testified that he took the option to let the property for business purpose as it is indicated in the letter and that it was for this reason he paid the sum of **₦8,000,000.00 (Eight Million Naira)** only to the Claimant as two years advance rent for the period of 01/11/2009 – 31/10/2011.[18]

The Defendant's testimony with respect to the initial rent paid on the property at the commencement of

[18] See paragraph 13 of the Defendant's Statement on Oath

the tenancy more or less corroborated the Claimant's testimony on the same issue. The Claimant testified that the agreed rent for the property was the sum of **₦4,000,000.00 (Four Million Naira)** only *per annum* and that he granted the property to the Defendant for an initial term of two years from 01/11/2009 – 31/10/2011; that the Defendant made an advance payment of the sum of **₦7,000,000.00 (Seven Million Naira)** only; whilst he retained the balance of **₦1,000,000.00 (One Million Naira)** only, to renovate the property.[19]

By my reckoning, it could not have been a coincidence that the sum of **₦4,000,000.00** stated in the letter, **Exhibit D1**, as the rent *per annum*, should the Defendant opt to use the demised premises for commercial purposes, accords with the same amount received by the Claimant from the Defendant for the lease of the property. The clear inference to be

[19] See paragraphs 6 – 8 of the Claimant's Statement on Oath of 18/04/2016

drawn, from the narration in **Exhibit D1** and what actually transpired eventually between the parties, is that, even though the property is designed as residential premises; the Claimant indeed let the same to the Defendant for commercial purposes and I hereby so hold.

I must further hold that even though the Claimant attempted to distance himself from the letter, **Exhibit D1;** but the fact that rent quoted in the letter tallied with his oral evidence suggested to the Court that he was aware of the letter all along. This revelation therefore further strengthened the Court's finding earlier on that the Claimant introduced the property to the Defendant *vide* **Exhibit D1**. I so hold.

WHEN DID THE DEFENDANT DELIVER UP POSSESSION OF THE PROPERTY AND HOW MUCH (IF ANY) DOES THE DEFENDANT OWE AS ARREARS OF RENT AND MESNE PROFITS?

It is significant to determine, on the basis of the evidence led on the record, the crucial question as to when the tenancy between the parties was effectively determined, in order to determine whether or not the Claimant is entitled to the sums claimed as arrears of rent and mesne profits.

As I had found earlier on, both parties agreed that the property was let to the Defendant for an initial period of two years certain, from 01/11/2009 to 31/10/2011. The case as told by the Claimant is further that he further granted the Defendant another year's tenancy on the property, from 01/11/2011 to 31/10/2012; but at an increased rent of **₦6,000,000.00** which the Defendant paid; that another term of one year at the same rent was further granted to the Defendant for the tenancy year 01/11/2012 to 31/10/2013; that invariably the Defendant paid only the sum of **₦1,500,000.00** but refused to pay the balance; and that the said

sum of **₦1,500,000.00** was the last amount the Defendant paid as rent on the premises.[20]

I agree with the submissions of the Claimant's learned counsel that the Defendant apparently did not deny the Claimant's claim as to the issue of paying increased rent for the 2011/2012 tenancy year or that he paid only a part of the rent for the 2012/2013 tenancy year; and that the sum of **₦1,500,000.00** was the last rent he paid on the premises. His only response to the Claimant's claim here is that it was his company that dealt with the Claimant and not him in person.[21]

Now, the point of dissent between the two parties relates to the circumstances under which the Defendant vacated the premises. I had earlier on narrated the Defendant's testimony as to how the Claimant instigated the authority of the Federal

[20] See paragraphs 9 – 12 of the Claimant's Statement on Oath of 18/04/2016
[21] See paragraph 16 of the Defendant's Statement on Oath.

Housing Authority to carry out enforcement action on his company on the premises on 22/04/2014, which, according to him, invariably led to the collapse of the company; and how as a result of the enforcement action, the Defendant vacated the premises in April, 2014, immediately after the enforcement action.[22]

The Claimant's claim is however that due to his official engagements, he appointed one **Sedik Mohammed** to take charge of the property;[23] that in order to save the property from deterioration, the said **Sedik** served the Defendant all the necessary statutory notices in order to recover possession of the premises from him; that the said agent took the Defendant before the District Court, FCT, wherein he obtained judgment against the Defendant for recovery of possession on 15/09/2015;[24] that on the basis of the judgment, he instructed his Solicitors

[22] See paragraphs 22 – 24.
[23] *Vide* the letter **Exhibit P5** dated 3rd November, 2014, written by Senator J. J. Akpanudoedehe to Mr. Abubakar Sadiq Mohammed
[24] *Vide* **Exhibit P6.**

to execute the judgment; that execution took place on 14/12/2015 and that he took possession of the property on 14/12/2015.[25]

The said **Sedik Mohammed**, who testified as the **PW2**, corroborated the Claimant's testimony, as the one who was appointed by the Claimant to manage the demised premises; that he instituted an action for recovery of premises against the Defendant at the District Court of the FCT, wherein he got judgment; that he was the one that followed up on the execution of the judgment, which took place on 14/12/2015; that the Claimant took possession of the premises on the same 14/12/2015, that after taking possession, he locked up the gate of the premises, and with the consent of the Claimant, got a security man to secure the premises.[26]

[25] See paragraphs 20 – 24 of the Claimant's Statement on Oath of 18/04/2016.
[26] See Paragraphs 2 – 6 of the PW1's Statement on Oath.

As I had earlier on held, there is nothing in the judgment, **Exhibit P6,** making it invalid or incompetent. I must also agree with the contention of the Claimant's learned counsel that the judgment must enjoy the presumption of regularity as provided by the **s. 146(1)** of the **Evidence Act**.

Even if the judgment is incompetent in its face, this Court, by the present action, lacks the jurisdiction to declare it as invalid as urged by the Defendant's learned counsel. The judgment was secured against the Defendant. It is immaterial to undertake an enquiry, in the present action, as to whether there is evidence of service of statutory notices on the Defendant by the Claimant prior to securing the judgment in **Exhibit P6**. Since there is no evidence of any appeal lodged against the judgment, it must be presumed that the due process was followed by the Claimant in the suit, that is, the **PW2**, before securing the judgment. I so hold.

The judgment, **Exhibit P6,** was delivered on 15/09/2015. This further presupposes that up until that day, the Defendant, in law, was still in possession thereof.

Although the Defendant claimed that he vacated the premises immediately after enforcement action undertaken by the Federal Housing Authority on 22/04/2014; there is however no evidence that he formally delivered up possession to the Claimant. It must be underscored; and the Defendant, being a legal practitioner, ought to also appreciate, that there is a world of difference between a tenant vacating a rented premises and he delivering up possession thereof to the landlord. In the present case, the evidence is that the Defendant was lawfully put in possession of the demised premises. As such, for the Defendant to lawfully deliver up possession of the premises, he must formally hand over to the Claimant or his representative. This is so because the

Claimant cannot, by self-help, enter into the premises to recover the same, when the Defendant has not formally delivered up possession of the same to him. I so hold.

In the circumstances therefore, I accept the testimony of the Claimant and the **PW2** that possession of the demised premises was lawfully recovered, upon securing Court judgment, on 14/12/2015. I so hold.

The implication is further that, up until the day possession of the premises was lawfully recovered by the Claimant, the Defendant was lawfully bound to pay arrears of rent and mesne profits. I so hold.

The evidence before the Court is that the Defendant paid only the sum of **₦1,500,000.00** out of the rent sum of **₦6,000,000.00** with respect to the 2012/2013 tenancy. The Defendant did not lead any evidence to deny this fact.

I have noted the arguments of the Defendant's learned counsel that the Claimant failed to tender his statement of account in order to establish the rent payments made to him by the Defendant; but I must state that going this rout will be needless since there is no disagreement between the parties as to the rent charged and paid on the demised premises throughout. The Defendant's concern is that it was his company, **WSPL,** and not him personally that owed the amounts of rent arrears/mesne profit claimed.

I take cognizance of the unchallenged evidence of the Claimant[27] detailing how he arrived at the total amount claimed from the Defendant as arrears of rent and mesne profit. Without any further ado, I grant **reliefs (1)** and **(4)** with respect to the declaration and claim for the rent arrears of the sum of **₦4,500,000.00,** being balance for the 2012/2013 tenancy year.

[27] Paragraph 11 of 21/03/2017

With respect to the claim for mesne profit due from the Defendant from 01/11/2013 up to 14/12/2015, when the Claimant effectively took possession of the premises, I must first note that there seem to be a discrepancy between the amount of **₦12,900,258.00,** the Claimant sought declaration upon in **relief (2)** and the amount of **₦12,230,000.00** actually claimed in **relief (5)** of his *Statement of Claim*; which the Court, however elects to construe as an obvious error. The amount sought to be declared in **relief (2),** going by the evidence on record, ought to be the same sum claimed in **relief (5)**. I so hold.

A claim for mesne profit is said to accrue to a landlord from the tenant when he ceases to hold the premises as a tenant to the time such a tenant gives up possession. In other words, mesne profits are awarded in place of rent where the tenant remains in

possession after the tenancy agreement has ran out or been duly determined. See *Obijiaku Vs. Offiah*.[28]

In the present case, the Claimant failed to adduce evidence of the date of termination of the Defendant's tenancy over the demised premises; apart from stating that upon the effluxion of the initial two year term granted, for which the Defendant paid at once, the tenancy was converted to one from year to year.

It is also not specifically disclosed in the summary judgment, **Exhibit P6**, the date the tenancy was formally determined, in accordance with the law.

What is however not in contest between the parties is that right from the tenancy year commencing on 01/11/2011, the rent was increased from the sum of **₦4,000,000.00** to the sum of **₦6,000,000.00** per annum and that the Defendant paid for the

[28] [1995] 7 NWLR (Pt. 409) 510.

2011/2012 tenancy year; but began to falter as from 2012/2013, when he paid a part of the rent. As such, as from 01/11/2013 to 31/10/2014, the Defendant will be entitled to pay the sum of **₦6,000,000.00** to the Claimant; and that from 01/11/2014 to 31/10/2015, he will also be entitled to pay another sum of **₦6,000,000.00** to the Claimant, as correctly enumerated by the Claimant in *paragraph 11(ii)* of his *Statement on Oath* of 21/03/2017.

As the Claimant also correctly claimed, he will further be entitled to one month's rent, at the prorated rate of ₦500,000.00 *per* month from 01/11/2015 to 30/11/2015. With respect to the month of December, 2015, since the case of the Claimant is that he effectively recovered possession of the premises on 14/12/2015, he will only be entitled to a daily prorated rent from 01/12/2015 up to 14/12/2015, when possession was effectively

recovered. As such the amount of **₦400,258.00** claimed by the Claimant for that period could not have represented rent for less than half of December, 2015. I so hold.

In the circumstances, I hold that the Claimant failed to prove his entitlement to the mesne profit for the period – 01/12/2015 to 14/12/2015. Effectively therefore, the Claimant is entitlement to the sum of **₦12,500,000.00** proved, as the amount of arrears of rent or mesne profits due to him as *per* **relief (5)** of his Claim.

In granting this sum, I adopt the principle of law a Court is entitled to grant a lesser monetary relief than what is claimed, insofar as it is proved by evidence. See *Akinterinwa Vs. Oladunjoye;*[29] *Okuilor Vs. Jite*.[30]

[29] [2000] ALL FWLR (Pt. 10) 1690
[30] [2005] All FWLR (Pt. 287) 855

The Court also held in *A. P. Limited Vs. Owodunni*,[31] that the Court can overlook an inexplicit formulation of a claim so long as it will not lead to a miscarriage of justice. As such, the fact that the Claimant did not correctly separate claim for arrears of rent from claim for mesne profits would not defeat his claim in so far as no miscarriage of justice has been shown to have been occasioned against the Defendant. I so hold.

The Claimant has also claimed the sum of **₦12,230,000.00** as value of the repair works to be undertaken as a result of damages purportedly done to the demised premises by the Defendant.

The Claimant testified that after he effectively recovered possession of the premises from the Defendant, he hired the services of an Estate Valuer who went ahead to value the damages on the

[31] [1991] 8 NWLR (Pt. 210) 391 @ 418.

property and came up with a Valuation Report in that regard.

The **PW1, Alhassan Baba,** testified with respect to the said valuation of the purportedly damaged property. He tendered in evidence as **Exhibit P8,** Valuation Report on the said property, prepared by ***Baba & Co.,*** firm of Estate Surveyors and Valuers. Although the witness did not give any evidence apart from tendering the Valuation Report, he was however cross-examined by the Defendant's learned counsel. He stated, under cross-examination that the sum of **₦12,230,000.00** stated at **page 11** of the Report was the assessed cost of the damages identified in the building as itemized on **page 8** of the Report. He further stated, more importantly, that:

> ***"The damage component is the components of the property and features of the building that are defective. The damage value represents the value of the damage of the components. The damage***

value does not represent the amount to be expended to repair the property. … The term of reference was to determine the damage value of the property as a result of willful act of the occupant, which is different from the normal wear and tear. … The standard practice of the Nigerian Institute of Estate Valuers does not permit us to disclose our calculations in the Report. … It is correct that I or any of my staffs were not present when the damages occurred on the premises."

It is needless to dissipate time and space in considering this Report, **Exhibit P8**. It must be underscored that pleadings is the foundation upon which evidence is built. I had carefully examined the pleadings filed by the Claimant. The only link between the Claimant's pleadings and **Exhibit P8** is the averment in *paragraph 25* of the *Statement of Claim* where the Claimant pleaded as follows:

"The Plaintiff avers that he thereafter hired the services of an Estate Valuer who valued the

damages caused on the Plaintiff's property by the Defendant and the Estate Valuer prepared a valuation report in relation to the said Plaintiff's property…."

I had also examined the remaining portions of the Claimant's pleadings. Nowhere did he specially or specifically plead the purported damages referred to in *paragraph 25*, in order to give the Defendant proper notice of the case he was to meet in Court in that respect.

In the circumstances, in the absence of pleading of the damages on the demised premises in the *Statement of Claim*, the Report, **Exhibit P8** therefore stands alone and cannot be countenanced. The law is trite that evidence adduced with respect of facts not pleaded goes to no issue.

Furthermore, the claim for **₦12,230,000.00**, for damages caused on the property and for repairs and renovation, is in the area of special damages,

which, as I had stated earlier must be specially pleaded and strictly proved. The Court of Appeal shed more light on how special damages is pleaded and proved in *Mobil Producing Nigeria (Unlimited) Vs. Davidson & Anor.*,[32] where it was held as follows:

> ***"Unlike general damage, special damages must be claimed specifically and proved strictly since the Court is not entitled to make its own estimate of same. The plaintiff must plead and particularize any item of special damage so that losses can be exactly known and accurately measured."***

Therefore, in the absence of proper pleading of the alleged special damages in the present case, the Report, **Exhibit P8** becomes useless and unreliable. I so hold. As such, it also becomes needless in the circumstances, to determine the point made by the

[32] [2019] LPELR-2145(CA). See also Ado Vs. Commissioner of Works, Benue State [2007] 15 NWLR (Pt. 1058) 429; UBA Plc. Vs. Ekanem [2010] 2 NWLR (Pt. 1177) 181.

Defendant's learned counsel, as to whether or not the **PW1** testified as an expert witness or not.

As it stands therefore, the Claimant has failed to prove the damages claimed, therefore rendering **reliefs (3)** and **(6)** of the Claim as unsustainable in the circumstances. I so hold.

The result is that issue (2) as set out is resolved partially in favour of the Claimant.

In the final analysis, the Claimant's claim succeeds in part. For the avoidance of doubt and abundance of clarity, judgment is hereby entered in favour of the Claimant upon the following terms:

1. ***It is hereby declared that the Claimant is entitled to be paid the sum of ₦4,500,000.00 (Four Million, Five Hundred Thousand Naira) only by the Defendant, being the outstanding rent balance due to the Claimant for the occupation of his property, a five (5) bedroom detached Duplex with a 3 Bedroom Boys***

Quarters for a tenancy term from 1st November, 2012 to 31st October, 2013.

2. ***The Defendant is hereby ordered to pay to the Claimant the sum of ₦4,500,000.00 (Four Million, Five Hundred Thousand Naira) only, being the outstanding rent balance due to him for the Defendant's occupation of the demised premises referred to in (1) above.***

3. ***It is hereby ordered that the Defendant shall pay the Claimant, the sum of ₦12,500,000.00 (Twelve Million, Five Hundred Thousand Naira) only being further arrears of rent and mesne profit due on the demised premises referred to in (1) above, from 1st day of November, 2013 until 30th November, 2015.***

4. ***The Defendant shall pay the sums set out in (2) and (3) above at the rate of 10% per annum from the date of this judgment, until the same is finally liquidated.***

5. ***Either party shall bear his respective costs of this action.***

OLUKAYODE A. ADENIYI
(*Presiding Judge*)
22/06/2020

Legal representation:

Henry O. Chichi, Esq. (with **J. C. Ibeh (Miss); O. Zubair (Miss); Victor Offor, Esq.; Mami Nwadukwe (Miss)**) – *for the Claimant*

Godwin N. Chigbu, Esq. (with **Chinedu Ugorji, Esq. & Zahid Umoru, Esq.**) – *for the Defendant*