IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

DELIVERED THE 8TH DAY OF MAY, 2020

BEFORE HIS LORDSHIP: HON. JUSTICE ASMAU AKANBI – YUSUF

FCT/HC/CV/1123/2019

BETWEEN

MRS. OLUSHADE TONADE ..... CLAIMANT

AND

PASTOR (MRS) IQUO EYO ..... DEFENDANT

JUDGMENT

This matter was placed under the fast track proceedings by the Chief Judge of the FCT, Abuja the 7th day of October, 2019 and thereafter transferred from Court 10 to this Court. By an amended writ of summons filed the 20/1/2020, the claimant herein claims against the defendant the following reliefs:-

a. A DECLARATION THAT by the understanding/agreement reached between the defendant and claimant that was brokered and facilitated by Pastor Ekanem and Pastor Ibitoye in August 2014 the claimant is

entitled to a renewal of her lease over QMA Park, at IBB Boulevard, Maitama District, Federal Capital Territory, Abuja.

b. A DECLARATION THAT the Notice to Tenant of Owner's Intention to Apply to Court to Recover Possession dated 5th January, 2019 served on the claimant vide Beta Courier Service on 6th February, 2019 at the instance of the defendant is defective, invalid and incompetent.

c. A DECLARATION THAT Notice to Tenant of Owner's Intention to Apply to Court Recover Possession dated 5th January, 2019 and served on the claimant on 6th February, 2019 cannot form the basis or be a weapon upon which the defendant can dispossess and/or eject the claimant from the QMA Park, at IBB Boulevard, Maitama District, Federal Capital Territory, Abuja.

d. AN ORDER RESTRAINING the defendant , its privies, agents or representatives from dispossessing or ejecting the claimant from the said QMA Park, at IBB Boulevard Maitama District, Federal Capital Territory, Abuja on the basis of Notice dated 5th January, 2019 or the so called warrant from the Chief District Court, Abuja to enable the defendant enter into and take possession of the said QMA Park, at IBB Boulevard Maitama District, Federal Capital Territory, Abuja without recourse to and/or given the claimant the opportunity to be heard in respect of her lease over the said park.

IN THE ALTERNATIVE

e. AN ORDER OF THIS HON. COURT directing the defendant pay the plaintiff the sum of #50,999,357.91k (Fifty Million, Nine Hundred and Ninety One Thousand, Three Hundred Fifty Naira, Ninety One Kobo) being the outstanding total cost of the development and improvement effected on the said QMA Park, at IBB Boulevard Maitama District, Federal Capital Territory, Abuja by the plaintiff in the course of the 7 years lease.

Particulars of outstanding sum of N50, 991,357.91k

1. The claimant expended the total sum of #98,264,088.36k (Ninety Eight Million, Two Hundred and Sixty Four Thousand, Eighty Eight Naira, Thirty Six Kobo) to develop the park and to make the park what it is today.
2. The claimant paid a total of #11,000.00 (Eleven Million Naira) to the defendant for the 7 years lease.
3. Claimant has generated #36,272,730. 45k from the use of the park in the course of the 7 years lease.
4. #11, 000,000.00 paid by the claimant plus the sum of #36,272,730.45k generated as profit from the use of the park in 7 years will translate to #47,272,730. 45k
5. When the sum of #47,272, 730.45k is removed from the total of #98,264,088.36k used by the claimant to develop and build the park the total sum outstanding will be #50,991,357.91k.

The defendant filed a statement of defence and counterclaim. The counter claimant claims against the claimant/defendant as follows:-

a. AN ORDER for the immediate possession of the Park known as QMA Park IBB Boulevard Maitama, Abuja to be delivered by the defendant to counter claim to the counter claimant.
b. AN ORDER directing the defendant to the counter claim to be paying a sum of #708,333.33 per month to the counter claimant from the 1st day of January, 2019 for the use and occupation of QMA Park Park IBB Boulevard Maitama, Abuja until possession of the Park is given up by the defendant to the counter claim.
c. AN ORDER directing the defendant to the counter claim to be paying 2% interest rate per month on the sum of #708,333.33 from 1st January, 2019 until possession of the Park is given up by the defendant to the counter claim.
d. AN ORDER directing the defendant to pay the counter claimant a sum of #5,000,000.00 as Solicitors' fee for defending the main action and for prosecuting this counter claim.
e. AN ORDER directing the defendant to the counter claim to pay the Ground rents in respect of the QMA Park Park IBB Boulevard Maitama, Abuja and other government charges from 2012 until she vacates the Park to the appropriate government agencies.
f. General damages in the sum of #50,000,000.00.

g. Cost of the suit.

At trial, the claimant called two (2) witnesses, one of the witnesses was subpoenaed. The counterclaimant also called (2) two witnesses. The Pw1 Mrs Joy Mudi Ogitie, an event planner and hospitality consultant was subpoenaed by the claimant. It is her evidence that she knows both parties and the QMA Park,the subject matter [hereinafter referred to as the Park]. She said she met with the defendant to discuss about the park. That the defendant agreed to lease out the park to her at #1,000,000.00 per annum, she couldn't remember the number of years they agreed to. She further stated that when she couldn't meet up with the years demanded by the defendant, she introduced the claimant to the defendant and they had a meeting at the defendant's house where the defendant maintained her stance on leasing the park. The Pw1 stated that she couldn't meet up with the money requested by the defendant, thus she involved the claimant. It is the evidence of the Pw1 that at the meeting she jokingly asked the man that was with them thus: "…*after I develop the land, hope you would not tell me to come and pay #50,000,000.00";* that the defendant responded thus *"how can she increase the rent since she knows it's a children's event".* She stated further that when she asked if they could make half payment, the defendant laughed and said there should be a commitment. The pw1 was cross examined.

The Pw2 adopted her witness statements on oath dated the 27/9/19 and 20/1/20. The following documents were admitted without objection from the defendant/counterclaimant's counsel.

a) Exhibit A1 is Notice to Quit dated 29th June, 2018 together with the intracity delivery waybill dated the 5/2/19;
b) Exhibit A2 is the Notice to Quit dated the 5th January, 2019;
c) Exhibit A3 is Re: Quit Notice dated the 13th July, 2018;
d) Exhibit A4 is the Re: Notice to Tenant of Owner's Intention to apply to court to recover possession;
e) Exhibit A5 is the evidence of payment by the claimant to the defendant signed by both parties the 8/9/14;
f) Exhibit A6 is the proposed development of QMA Park for Omega Events Arena; Priced Bill of Quantities
g) Exhibit A7 is the proposed development of IBB Boulevard Park Plot No 2012A.
h) Exhibit A8 is the unsigned lease agreement btw the parties
i) Exhibit A9 is the print out of pictures & text messages (19) nos.
j) Exhibit A10 is the certificate of compliance with section 84(1) (2) (3) & (4) of the Evidence Act on Computer Generated Evidence.

The Dw1 and Dw2 adopted their respective witness statements on oath. They were cross examined by the claimant's counsel. The following documents were admitted in evidence:

a) Exhibit D1 is the rental valuation report on QMA Park, IBB Boulevard prepared by Esv. Ibrahim Hassan.

b) Exhibit D2 is the Rent receipt No 154 dated 12/07/2010.

c) Exhibit D3 is the certificate of compliance with section 84 of the Evidence Act

d) Exhibit D4 is the Suit No FCT/CV/1123?2019 between Mrs Olushade Tonade & Pastor (Mrs) Iquo Eyo
e) Exhibit D5 is a photocopy of the Public Notice Parks and Recreation Dept.
f) Exhibit D6 is the Re: Determination of Tenancy at QMA Park dated 31st December, 2012.
g) Exhibit D7 is the photocopy of AMMC Billing Demand Notice dated 27th September, 2010.
h) Exhibit D8 is a letter of instruction and authority dated 28th June, 2018.
i) Exhibit D9 is a Notice to Quit dated the 29th June, 2018.
j) Exhibit D10 is a Notice to Tenant of Owners' intention to apply to court to recover possession dated 5th January, 2019.
k) Exhibit D11 is a Notice to Tenant of Owners' intention to apply to court to recover possession dated 7th February, 2019.
l) Exhibit D12 is the notice to tenant of owners' intention to apply to recover possession dated the 16th May, 2019.

m) Exhibit D13 is a brief from Tonade O.O Mrs to Mrs Iquo Eyo dated 23rd March, 2019.

n) Exhibit D14 is the determination of the rent of QMA Park dated 27th March, 2019

o) Exhibit D15 is a handwritten document dated the 13/03/14.

Learned counsel to the claimant objected to the admissibility of exhibit D1. Counsel argued that the document was made during the pendency of this suit. He referred the court to ***SECTION 83(3) EVIDENCE ACT; UNITED PLC V ROCK ONOH CO LTD (1995) VOL II NWLR AT PG 474***. Learned counsel to the counter claimant submits that both counsel had agreed not to object to the admissibility of documents to be tendered by them. He argued further that there is an exception to the admissibility of documents made during the pendency of a matter; that the exhibit D1 being an expert opinion was not made pursuant to the statement of claim; that the document was made prior to the filing of the counterclaim; that a counterclaim is a separate suit. He stated that the exhibit D1 was pleaded, it's relevant and admissible. He urged the court to discountenance the argument of the claimant counsel. The claimant replying on point of law submits that Exhibit D1 is inadmissible by the provision of the Evidence Act; that the counterclaim cannot stand without the claim of the claimant. The probative value of exhibit D1 shall be determined in the course of the judgment.

At the close of evidence, both parties filed their final written addresses. The defendant filed a final written address dated the 11/02/2020 as well as a Reply on Points of Law dated the 27/02/2020. The claimant on the other hand filed a final written address the 25/02/2020. Learned counsel on both sides adopted their respective written addresses and matter was adjourned for Judgment.

Learned counsel to the defendant/counter claimant formulated the following issues for determination:

1. *Whether the claimant's case discloses a reasonable cause of action against the defendant.*
2. *Whether there was any understanding/agreement reached between the claimant and the defendant that will entitle the claimant to a renewal of her lease/tenancy over the property in dispute.*
3. *Whether the Notice dated 5/01/2019 given by the counter claimant to the claimant is valid.*
4. *Whether the claimant is entitled to her alternative claim for a sum of #50,991,357.91k or any sum at all from the counter claimant.*
5. *Whether the counter claimant is entitled to the reliefs A - G sought in the counter claim.*

Learned counsel to the claimant on the other hand formulated the following issues for determination:

1. *Whether the process titled "Defendant/Counter claimant's response to the counter claimant/defendant to the counter claim's reply to the statement of defence and defence to counter claim" dated and filed on 10th October, 2019 is competent.*
2. *Whether the claimant is entitled to the reliefs sought in her amended writ of summons and statement of claim.*
3. *Whether the defendant/counter claim is entitled to the reliefs sought in her counter claim.*

I have considered all the processes as well as the evidence before the court; I shall adopt the issues as formulated by learned counsel to the claimant as same will determine all the issues raised by the counter claimant. However I will take the issue 1 as a preliminary matter and treat issues 2 and 3 as substantive issues.

Issue 1

1. *Whether the process titled "Defendant/Counter claimant's response to the counter claimant/defendant to the counter claim's reply to the statement of defence and defence to counter claim" dated and filed on 10th October, 2019 is competent.*

Learned counsel to the claimant argued that the process titled "Defendant/counter claimant's response to the counter claimant/defendant to the counter claim's reply to the statement of defence and defence to

counter claim" dated and filed the 10th October, 2019 is incompetent; that it is not recognized by the Rules of this court. He submits that the claimant's reply to the defendant's statement of defence brings an end to the exchange of pleadings by parties in the substantive suit. He is of the opinion that by the provision of the FCT High Court Rules, a different rule applies to the counter claim; He referred to ***OR 17, 18 (1) & (2) HIGH COURT RULES.*** Counsel argued that the Reply contemplated in ***OR18R 2 HCR*** is the defence of the claimant in the suit and not the Reply to a statement of defence filed in response to a counter claim. He urged me to strike out the process. Counsel referred to ***ORIJEKWE V ORIJEKWE (2002) 6 NWLR (PT 762) 31 AT 52; AJEWOLE V ADETIMO (1994) 3 NWLR (PT 335) 739 AT 757; KALIEL V ALIERO (1999) 4 NWLR (597).***

Learned counsel to the counter claimant in paragraphs 5 – 9 of the reply on point of law, argued that pleadings are not concluded until the issues or facts are presented. He referred to Civil Procedure in Nigeria. ***2ND EDITION FIDELIS NWADIALO AT PAGE 404***. He submitted that the process be treated as a mere irregularity as envisaged by ***OR5 RULES 1 & 2 HCR*** more so as the claimant failed to complain timeously, that he is estopped at this stage from raising any procedural irregularity.

ORDER 17 HCR deals with the defence and counterclaim

Rule 1 state: The statement of defence shall be a statement in summary form and shall be supported by copies of documentary evidence, list of witnesses and their written statements on oath.

Rule 7 state: where a defendant by his defence sets up any counterclaim which raises questions between himself and claimant along with any other persons, he shall add to the title of his defence a further title similar to the title in a statement of claim, stating the names of all persons who, if such counterclaim were to be enforced by cross action would be defendants to the cross action, and shall deliver his defence to as many of them as are parties to the action within the period required to deliver it to the claimant.

ORDER 18 deals with Reply

RULE 1 state: Where the claimant desires to make a reply, he shall file it within 7 days from the service of the defence

RULE 2 STATE: Where a counterclaim is pleaded, a reply is called a defence to counterclaim and shall be subject to the rules applicable to defence.

In the case of In the case of ***OROJA & ORS v. ADENIYI & ORS (2017) LPELR-41985(SC),*** the supreme court relying on its earlier decision in ***EFFIOM v IRON BAR (2000) 1 NWLR (PT. 678) 341*** stated the nature and definition of a counter claim as thus- *"A counter-claim is an independent action and it needs not relate to be in any way connected with the plaintiffs' claim or raise out of the same transaction. It is not even analogous to the plaintiff's claim. It*

need not be an action of the same nature as the original claim. A counterclaim is to be treated for all purposes for which justice requires it to be treated as an independent action."

It is trite that the claimant has to prove his case as pleaded and must prove the truth of the contents of the paragraph of the pleading in support of the reliefs sought in order to obtain judgment. If the claimant fails to prove his case on the pleading to the satisfaction of the Court, his case crumbles. It is also the law that a counterclaim is an independent action wherein the counterclaimant is expected to prove his case as pleaded, where he fails to do so his case will not stand. It therefore shows that what is good for the goose is also good for the gander. The ***ORDER 18 R 2 HCR*** has not expressly shut out the counterclaimant from replying, it will then be unjust to shut the defendant/counterclaimant out to controvert issues raised in the defence to counterclaim. It is stated therein that the reply to a counterclaim is to be called a DEFENCE and in the rules of pleadings, a party is expected to file a Reply to a defence where new issues have been raised in a statement of defence and since a counterclaim is an independent action, a REPLY to the statement of defence in a counter claim shall as well be in tandem with the rules of pleadings. Therefore the argument of the claimant/defendant hereby fails. I hold that the counterclaimant/defendant's process filed the 10/10/2019 is competent and same shall be relied on in the determination of this suit.

Having resolved the preliminary issue in favour of the counter claimant, I now proceed to determine the substantive issues.

Whether the claimant is entitled to the reliefs sought in her amended writ of summons and statement of claim.

In the instant case, the claimant testified that she has an understanding/agreement with the claimant to renew the lease agreement; that same was brokered and facilitated by late Pastor Ekanem and Pastor Ibitoye in August, 2014; Pw2 testified that she is entitled to the renewal of her lease over the Park; that the defendant agreed to lease the subject matter to her and Pw1 at a consideration of #1,000,000.00 per annum for seven years and based on that understanding between her and the defendant a draft lease agreement was prepared by the defendant's solicitor; that sometimes in March 2018, the late Pastor Ekanem who on behalf of the defendant met with her to discuss the renewal of the lease of the park. That before they could reach an agreement, the Pastor Ekanem died, thus putting a hold to the renewal of the lease. See paragraphs 8, 15, 16,17,18,19 and 20 of the witness statement on oath dated 20/1/20. The evidence of the defendant on the other hand is that the claimant paid the sum of #1,000,000.00 to her lawyer the 12/07/10, and that it was agreed between parties that the tenancy shall commence the 15/09/2010 and end 14/09/2011. It is clear parties are in dispute as to the nature of tenancy relationship they entered into.

The documents that need to be resolved here are as follows:

1. Is exhibit A8 a valid lease agreement?
2. What is the status of exhibit D2, A5, A3 & A9?

The resolutions of these documents will determine whether there was an understanding/agreement to create a lease agreement, and if the answer is in the affirmative, whether there was an intention to renew the lease agreement between the parties. It is trite that declaratory relief is not granted on admission. The claimant must prove her entitlement to claim. See ***MOHAMMED v WAMMAKO & ORS (2017) LPELR – 42667 (SC)***. The claimant tendered Exhibit A8, a lease agreement to buttress the fact that the relationship between the parties was a lease agreement; the said exhibit A8 was not signed by either of the parties. The alleged "Lease Agreement marked as Exhibit A8 is an undated and unsigned document, therefore same cannot be held as a valid lease agreement. It is the law, that an unsigned document has no probative value. It is a worthless paper and commands no respect. See ***OMEGA BANK (NIG) PLC V O. B.C LTD (2005) LPELR – 2636 SC PER TOBI JSC.*** Thus exhibit A8 has no probative value and same is hereby discountenanced with.

Exhibit D2 is the rent receipt said to have been issued to the claimant, it is the evidence of payment of #1,000,000.00 for the rent of the Park at Maitama Abuja for a period of 15th September, 2010 to September, 2011. This clearly shows that the tenancy relationship between parties as at 15th

September, 2010 to the 14th September, 2011 was for one year term certain and I so hold. See ***131,132,134 EVIDENCE ACT. AUGUSTUS WUYOPONDI KIMDEY & ORS v. MILITARY GOVERNOR OF GONGOLA STATE & ORS (1988) LPELR-1692(SC) PER NNAEMEKA – AGU*** where he stated that *"the legal proposition that where there is oral as well as documentary evidence, documentary evidence should be used as a hanger from which to assess oral testimony is a sound one."*

The relationship initially created between parties was one year term certain that is, the period of 15th September, 2010 to 14th September, 2011. It is the evidence of the claimant that herself and the defendant had an understanding with the help of Pastor Ekanem(deceased) that the lease relationship shall commence from January, 2012 to December, 2018. See Paragraph 12 of claimant's witness statement on oath dated 20/01/2020. Exhibit A5 was signed by both parties the 08/09/2014, and it is stated therein that *"… as part payment for the 7 year lease commencing from January, 2012 to December, 2018 of QMA Park on IBB Boulevard, Maitama- District Abuja"*

It is glaring that the parties subsequently created a lease agreement/ relationship by the Exhibit A5. I place reliance on the case cited by the claimant's counsel ***OKECHUKWU v. ONUORAH (2000) LPELR-2431(SC).*** The counterclaimant will not be allowed to resile on the said agreement, despite

her efforts under cross examination to deny same. See ***ADERIBIGBE & ORS v. REGISTERED TRUSTEES OF THE CHURCH OF THE LORD (ALADURA) WORLDWIDE & ORS (2013) LPELR-22222(CA)*** where the Court of Appeal stated *"…and since documentary evidence is the hanger upon which oral evidence is assessed, the party whose evidence is glaringly supported by documentary evidence has more credibility than the other party who possesses no such documentary evidence."* Thus I hold that parties subsequently created a 7 year lease agreement which commenced from January, 2012 and ended December, 2018.

On the proprietary of Exhibits A3 & A9, these are the Re: Quit Notice dated the 13th July, 2018 and telephone messages between the Pastor Mike Ekanem (Deceased) and the claimant respectively. See paragraphs 15, 16,17,18,19 & 20 of the witness statement dated 20/01/20 and Paragraphs 5e and f of the claimant's witness statement on oath dated 27th September, 2019. The claimant stated in her evidence that defendant had consented to the renewal based on the messages sent to her by the Late Pastor Ekanem; that the rent renewal discussion between her and the Pastor was a lease renewal for 10 years. This was denied by the counterclaimant. Learned counsel to the claimant argued that the messages were indications that parties had an intention to renew the lease agreement.

Upon being cross examined by the claimant's counsel, Dw2 was asked:

Question: see Exhibit A3. Is that the letter from the plaintiff to you? Answer: Yes;

Question: Did you respond by way of writing to this letter?

Answer: I didn't respond to it with reason"

Also the cross examination of Pw1 on exhibit A3 states:

"Question: these are the documents that you brought to court. Can you point to one of the document that states where you and the defendant said there would be renewal?

Answer: I can point to one; my response to the quit notice, exhibit A3 and there are also text messages."

I have had to look at exhibits A3 & A9; it is not expressly stated in any of the exhibits that the counterclaimant agreed to renew the lease agreement for 10yrs. I find it pertinent to reproduce one of the messages (Exhibit A9) between the claimant and the late Pastor Ekanem;

" remain blessed madam shade, how is oga tonade,fr my discus wt my sis yest nite its like I wl be comn 2 abuja 2moro evenin 4d rent dicusn, so pls tell ur husb.tanks pst mike kd".

Also the evidence of Pw2 in Para 7ix of her witness statement on oath dated 27/9/19 which tends to interpret the above telephone message cannot be sustained, as I cannot see where it is indicated in exhibit A3 that

the defendant agreed to renew the lease agreement for 10years.The exhibit A3 is in response to a Quit Notice issued to the claimant. The Exhibit A3 is hereby reproduced;

13th July, 2018.

Mrs. Iquo Eyo,

CBN Estate

Wumba District

Apo – Abuja.

Dear Ma,

RE: QUIT NOTICE

Yours dated 30th June, 2018 refers please.

We hereby acknowledge the receipt of your letter on the above subject matter. We however, wish to use this medium to notify you of our desire to renew the lease arrangement on the said property.

Please note that we had earlier intended to write you a letter of intent to renew the lease but we thought it wise to await the result of your deliberation on the matter with Rev. Ekanem (your brother) as it would be inappropriate on our part to go over or behind him in discussing the matter

since he already took it upon himself to intervene. You will also recall that he has always been involved in the transaction and played a major part in moving discussions on the lease of the property conclusively forward. He had a discussion with us concerning our occupancy of the property during which we informed him that we would like to extend our lease. He also informed us that you were open to the idea but that you demanded a review of the lease amount to which we also responded that we understood there will be a review but prayed that the increase be considerate of our plight and the economic situation in the country.

Ma, we believe we have both enjoyed a very amiable relationship and we on our part have taken very good care of your property despite the prevailing circumstances in the country. We therefore wish to use this medium to notify you of our desire to extend the lease and appeal to you for a kind consideration in the review of the lease amount.

Grateful in advance for your kind consideration of our prayers above. Thank you ma.

Yours faithfully,

Signed

Tonade O. Olushade For: Omega Events Arena.

For a valid lease to be binding; see ***OKECHUKWU v. ONUORAH (SUPRA)*** wherein it was stated:

"It seems to me plain that for an agreement for a lease to be valid there must be, among other essentials, agreement on the date of commencement of the term; and in the absence of this date, validity will not be given to the agreement. See Harvey v. Pratt (1965) 2 All E.R. 786 C.A. In order to have a valid agreement for a lease, it is essential that it should appear either in express terms or by reasonable inference from the language used in the instrument on what day the term is to commence. Indeed, both the commencement and the maximum duration of the term must be either certain or capable of being rendered certain before the lease takes effect. See Lace v. Chantler (1944) K.B. 305 at 306 - 307. As Lush L.J. Put it as early as in the case of Marshall v. Berridge (1881) 19 CH.D 233 at 245:- "There must be a certain beginning and a certain ending, otherwise it is not a perfect lease, and a contract for a lease must, in order to satisfy the Statute of Frauds, contain those elements". More recently in Harvey v. Pratt (supra) at 788, Lord

Denning re-emphasised the above principle of law as follows: - "It is settled beyond question that, in order for there to be a valid agreement for a lease, the essentials are that there shall be determined not only the parties, the property, the length of the term and the rent, but also the date of its commencement".

The exhibits A3 & A9 lacks all the characteristics listed in the above case. It can be glaring from the exhibit A3 that the claimant was responding to a Quit Notice issued to her the 30th June, 2018 by the counterclaimant. It can be deduced that the claimant was basically pleading with the counterclaimant/defendant to renew the lease arrangement. The expression/desire of the claimant to renew the lease agreement in the said correspondence and her reliance on the discussion or phone messages between the Late Pastor Mike Ekanem and the claimant will not suffice as both parties were not ad idem on the renewal of the lease agreement and I so hold.

A claimant asking for such relief must prove and succeed on the strength of his case and not rely on the weakness of the defence. The exhibit A5 which created the lease agreement between parties did not provide for an option to renew clause. It is contained therein that the 7 year lease is from January, 2012 to December, 2018, this court will not interpret what is not stated in the document signed by the parties. The claimant has a duty to produce the signed understanding/agreement between the defendant and

the claimant which was said to have been brokered and facilitated by Pastor Ekanem and Pastor Ibitoye. The standards of proof in civil cases are discharged on the balance of probabilities or the preponderance of evidence. It is the duty of the court to weigh the evidence by placing it on an imaginary scale of justice before arriving at a decision. See section 134 Evidence Act. The claimant has not discharged the onus placed on her. In the absence of any credible evidence and/or documentary agreement stating the intention of parties to renew the lease agreement, I hold that there is/was no understanding/agreement between the parties to renew the lease agreement, therefore Relief A fails and same is hereby dismissed.

The claim of the claimant in relief B and C are as follows

A DECLARATION THAT the Notice to Tenant of Owners' Intention to apply to court to recover possession dated 5th January, 2019 served on the claimant vide Beta Courier Service on 6th February, 2019 at the instance of the defendant is defective, invalid and incompetent.

A DECLARATION THAT the Notice to Tenant of Owners' Intention to apply to court to recover possession dated 5th January, 2019 cannot form the basis or be a weapon upon which the defendant can dispossess and/or eject the claimant from the QMA Park, at IBB Boulevard, Maitama District, Federal Capital Territory, Abuja.

It is not in contention that the claimant is a lessee to the counterclaimant and the claimant was served with various notices, including the Notice to Tenant of Owners' Intention to apply to court to recover possession dated 5th January, 2019 served on the claimant vide Beta Courier Service on 6th February, 2019. The claimant has argued that exhibit A2 is defective, invalid and incompetent. It is the law that a landlord desirous of recovering possession of premises from a tenant must serve statutory notices on the tenant before proceeding to the court to seek recovery of the premises from the tenant. The service of statutory notices is a condition precedent to the exercise of landlord's right of action to recover possession. See ***IHENACHO & ANOR V. UZOCHUKWU & ANOR (1997) LPELR-1460(SC)*** *"It cannot be over-emphasised that recovery of possession of a premises from a tenant in lawful occupation thereof by a landlord must only be obtained in the Plateau State, as indeed, in most other States of the Federal Republic of Nigeria, by virtue of an order of Court obtained after hearing the parties pursuant to the provisions of the Recovery of Premises Law. See: The Recovery of Premises Law, Cap. 115 Laws of Northern Nigeria, 1963. See too Sule v. Nigerian Cotton Board (1985) and Pan-Asian African Company Ltd. v. NICON (Nig.) Ltd . (1982) 9 SC 1. A landlord desiring to recover possession of premises let to his tenant shall firstly; unless the tenancy has already expired, determine the tenancy by service on the*

defendant of an appropriate notice to quit. On the determination of the tenancy, he shall serve the tenant with the statutory 7 days' notice of his intention to apply to the court to recover possession of the premises. Thereafter the landlord shall file his action in court and may only proceed to recover possession of the premises according to law in terms of the judgment of Court in the action." See also section 7 and 10(1) of the recovery of premises act.

The claimant in this instance is not the landlord of the subject matter. She has not sued for the Recovery of Premises. The issue of whether Exhibit A2 is competent, defective and invalid is a matter to be determined in action for Recovery of Premises and I so hold. Thus the relief B & C fails and are dismissed accordingly. I do not need intend to dwell on the Relief D, having dismissed reliefs B & C. the said Exhibit A2 is said to be a warrant obtained from the Chief District Court. It is of common knowledge that before a landlord can institute an action in court for possession of premises; he has to satisfy the prerequisite conditions. Thus the obtaining of Exhibit A2 from the Chief District Court/High Court is not out of place. Relief D is hereby dismissed for lacking in merit.

On the alternative claim, the claimant has asked the court to:

e) AN ORDER OF THIS HON. COURT directing the defendant pay the plaintiff the sum of #50, 991,357. 91k(Fifty million, Nine Hundred and Ninety One Thousand, Three Hundred Fifty Naira, Ninety One Kobo) being the outstanding total cost of the development and improvement effected on the said QMA Park, IBB Boulevard, Maitama District, Federal Capital Territory, Abuja by the plaintiff in the course of the 7 years lease.

Particulars of outstanding sum of #50,991,357.91k

The claimant expended the total sum of #98,264,088.36k (Ninety Eight Million, Two Hundred and Sixty Four Thousand, Eighty Eight Naira, Thirty Six Kobo) to develop the park and to make the park what it is today.

The claimant paid a total of #11,000,000.00 (Eleven Million Naira) to the defendant for the 7 years lease.

Claimant has generated #36,272,730.45k from the use of the park in the course of the 7 years lease.

#11,000,000.00 paid by the claimant plus the sum of #36,272,730.45k generated as profit from the use of the park in 7 years will translate to #47, 272,730. 45k is removed from total of #98, 264,088.36k used by the claimant to develop and build the park the total sum outstanding will be #50,991,357.91k.

It is the evidence of the claimant that she expended money on the park, with the impression that the lease would be renewed; that it would be unfair

for the defendant to throw her out of the park without any compensation. The pw2 in Paragraph 13 of her witness statement on oath states:

That based on the drawings and bill of quantities for the development of the park, I have expended a total sum of #98,264,088.36k (Ninety Eight Million, Two Hundred and Sixty Four Thousand Naira, Thirty Six Kobo) to develop the park what it is today. It was in view of the huge investment to the knowledge of the defendant that the understanding to renew the lease upon the expiration of first 7 years period was reached sometime in August 2014 with the assistance of Pastor Ekanem and Ibitoye.

Para 14: that construction work and development of park within the Federal Capital Territory, Abuja is usually capital intensive. The areas usually reserved or designated for parks are areas that are not often time suitable for residential purpose and are difficult to inhabit. This probably explained why the defendant did nothing on the park and allowed it lie fallow for several years before I was leased the park. I invested heavily in putting up infrastructural facilities on park to make the park attractive and what it is today.

Para 23: that it is apparent that the intention of the defendant is to chase the claimant out of the park and appropriate the development and fixtures on the park to detriment of the claimant and her investment. It was the intention and understanding of the parties to renew the lease as far back as at August 2014 that encouraged the claimant to continuously invest heavily

in the development of the park, thus making attractive to all, including the defendant.

Para 24: it will only be fair and just if the defendant does not want to renew the lease on the park with the claimant, to enable the claimant recoup her huge investment on the park, the defendant should pay the claimant the cost of the improvement and development carried on the park by the claimant in the course of the 7 years lease less the consideration of #11,000,000.00 paid by the claimant to the defendant for the 7 years and the income/profit generated by the claimant for 7 years on the park. The claimant in the course of the 7 years made a total of #36,272,730.45 as profit from the park.

The particulars of the #36,272,730.45 were stated as follows:

2013 January – December #4,284,907.50

2014 January – December #10,462,418.00

2015 January – December #9,137,294.00

2016 January – December #373,564.60

2017 January – December #4,468,900.00

2018 January – December #7,545,646.35

Total #36,272,730.00

The claimant shall rely on documents evidencing the sums tabulated above along with the claimant tithe papers evidencing the payment of 10% on the income/profit generated from the park.

Para 25: from the Bill for the development of the park, the claimant expended the total sum of #98,264,088.36k (Ninety Eight Million, Two Hundred and Sixty Four Thousand, Eighty Eight Naira, Thirty Six Kobo) to make the park what it today.

Para 27: the action(s) of the defendant is intended to frustrate and deny the claimant's ability to recoup her investment from the said park.

The general burden of proof in civil cases lies on the party against whom judgment would be entered if no evidence was adduced by either party. He who asserts must prove. See ***BULLET INT'L (NIG) LTD & ANOR V OLANIYI & ANOR (2017) LPELR 42475 (SC)*** where it was held

"Whoever desires a court of law to give him judgment as to any legal right, dependent on the existence of facts he asserts, has the burden or onus of proving that those fact exist. Failure to prove or establish positively asserted facts leads to assumption, admittedly that those positively asserted facts do not in fact exist."

It is trite that for a tenant/lessee to be entitled to refund of the money expended on the property of the landlord/lessor, he/she must produce the express written consent of the landlord. Learned counsel to the claimant

relied on the authority of ***OKECHUKWU v. ONUORAH (SUPRA),*** however in distinguishing the case to the present case, it is a fact that the parties in that case entered into an agreement in respect of a plot of land situate at 30, old market road, Onitsha. It was agreed that the respondents were to build a two floor structure in accordance with an agreed building plan in the name of appellant. On completion, the Appellant was to be given a flat on the first floor and a store on the ground floor. The written agreement was received in evidence as Exhibit 1. It was further agreed by parties that "the brothers would go into and remain in possession of the remainder of the building for 50 years reckoned from the date the Onitsha Local Government Council issued its permission for occupation of the building." An annual rent of N1, 700.00 was reserved. The Appellant requested and was paid 5 years rent from 1976 - 1981. The Appellant sued the defendant at the High Court inter alia, for N10, 000.00 as damages for breaches of covenants. The trial court held in favour of the Appellant and declared that the lease was void in law for not have a certain beginning. The respondent's appeal to the Court of Appeal was allowed and the decision of the trial court was set aside. The appellant thereafter appealed to the Supreme Court, and the decision of the court of appeal was affirmed. The Supreme Court held that the lease in question was a valid lease.

In the present case, there is no express agreement between parties as to the terms and conditions to be satisfied by parties. In Onuorah's case,

there was an agreement between parties, which the appellant wanted to resile on, hence the decision of the Supreme Court. The exhibit A8 before this court is a worthless paper which neither this court nor the parties can rely on. The Exhibit A6 & A7 that is, the proposed development of QMA Park; Priced Bill of Quantities prepared by McMiles Turnkey Projects, Abuja and Proposed Development of Park respectively cannot also be held to be an agreement between parties. There was no written consent of the counterclaimant for the claimant to have embarked on any development as the lease agreement is worthless. Also going by section 15 of the Recovery of Premises Act FCT, a tenant shall not be entitled to compensation in respect of any improvement, unless he has executed it with the previous consent in writing of the landlord. See ***REGISTERED TRUSTEES OF THE LIVING CHRIST MISSION & ORS V ADUBA & ANOR (2016) LPELR – 41591 (CA) AGIM JCA (PG 29- 30).***

Furthermore, learned counsel to the claimant cross examined Dw2 on the following:

Question; you would not know the cost or what it took the claimant to have put up those structures

Answer: No sir

Question: as at 2010 when you said the claimant took possession of the park and as at 2019 when the action was filed, the state of the park is different

Answer: yes

Question: the claimant occupation of that park and development of the park has added tremendous value to the park

Answer: Yes

Question: Would I be correct to say that it would be fair and just for the claimant to recoup investment or resources she has used in developing this park in question.

Answer: Yes, if we had agreement to what level of development we are talking about.

Question: When both of you agreed to this park, did you and the plaintiff agree on the level of development of the park.

Answer: Yes we did.

Question: Please tell the court what was the level of the development both of you agreed to.

Answer: We agreed she said she want to put a tent marquee, and two round huts and there were specifications for the round huts and they were going to grass and put interlocking because there was already a foundation in place at the park and a basement with retaining walls around the place and so any other that she has put there I wasn't aware.

Question: The marquee, do you know what it would have cost them to put up that marquee

Answer: I can't say because price varies.

Question: You said there was an agreement to what to develop on that land, did the plaintiff exceed the level of development

Answer: In terms of the additional things that she had added, yes

From the above evidence, it is clear that the defendant upon being cross examined is in agreement with the tent marquee, two round huts with agreed specification, growing of grass and interlocking of the park carried out by the claimant. The exhibit A6 which is a Bill of Quantities for the proposed development of the park, however cannot serve as an evidence/ receipt of purchase of the tent marquee, two round huts with agreed specification, growing of grass and interlocking of the park.

It is the law that Courts have a duty not to indulge in guesswork or speculation in their adjudication of causes or matters. ***TOAFIC SULE & ORS v. ZAINAB P. SULE & ORS (2019) LPELR-47178(CA).*** It is the duty of the claimant to prove the specific sum she is entitled to for the development carried out by her. ***SECTION 131 EVID ACT.*** There is no receipt or evidence of the purchase or work carried out on the park. The tabulation of the monies expended on the Park by the witness in her evidence without a document to support same goes to no issue. Parties to a suit must only plead facts and facts

only and not law ***OKECHUKWU v. ONUORAH (SUPRA).*** It is for the above reasons that the alternative claims of the claimant fails. On the whole, the claims ***A,B,C,D,& E*** fails and are accordingly dismissed.

Now proceeding to the counter claim, the defendant/counterclaimant claims as follows:

a. AN ORDER for immediate possession of the park known as QMA Park IBB Boulevard, Maitama Abuja to be delivered by the defendant to counter claim to the counter claimant.
b. AN ORDER directing the defendant to the counter claim to be paying a sum of #708,333.33 per month to counter claimant from the 1st day of January, 2019 for the use and occupation of QMA Park IBB Boulevard, Maitama Abuja until possession of the Park is given up by the defendant to the counter claim.
c. AN ORDER directing the defendant to the counter claim to be paying 2% interest rate per month on the sum of #708,333.33 from 1st January, 2019 until possession is given up and until total liquidation of the entire indebtedness.
d. AN ORDER directing the defendant to pay the counter claimant a sum of #5,000,000.00 as solicitor's fee for defending the main action and for prosecuting this counter claim.
e. AN ORDER directing the defendant to the counter claim to pay the Ground rent in respect of the QMA Park IBB Boulevard, Maitama

Abuja and other government charges from 2012 until she vacates the Park to the appropriate government agencies.

f. General damages in the sum of #50,000,000.00.

g. Cost of this action.

The issue for determination is:

WHETHER THE DEFENDANT/COUNTERCLAIM IS ENTITLED TO THE RELIEFS SOUGHT IN HER COUNTER CLAIM.

The defendant/counterclaimant has asked for the immediate possession of the subject matter. It is established from the evidence before the court that the lease agreement created via exhibit A5 between parties lapsed by effluxion of time. See Exhibit A5, the burden is on the counterclaimant to prove that she has satisfied the preconditions required for the recovery of the subject matter. In the case of ***HELIOS TOWERS (NIG) LTD V MUNDILI INVESTMENTS LTD (2014) LPELR 24608 (CA)*** the ways in which a lease agreement can be determined is stated as:

"it must be stated from the onset that the law governing the determination of a lease agreement of landed property for a term of years is different from the law governing the determination of other types of contract. The law recognizes that a lease agreement of landed property can be determined in any of four ways; namely (i) by effluxion of time (ii) by a surrender of the lease; (iii) by abandonment of the lease; and (iv) where there has been a breach of covenants, by forfeiture"

In the instant case, it can be deduced from exhibit A5 which states *"…7 years lease commencing from January, 2012 – December, 2018".* I have considered the evidence led by the counterclaimant vis a vis the documentary evidence in support of the facts. I have before me exhibits A2, A4, D10, and D11 & D12. For the purpose of clarity, I will state the heading of each of the exhibit:

1. Exhibits A2 & D10 are the Notice to Tenant of Owners' Intention to Apply to Court to Recover Possession dated the 5th day of January, 2019 but received the 6th February, 2019.
2. Exhibit A4 & D11 is the response to Exhibits A2 & D10.
3. Exhibit D12 is a Notice to Tenant of Owners Intention to Apply to Recover Possession dated the 16/05/2019.

The Court of Appeal in ***SPLINTERS (NIG) LTD V OASIS FINANCE LTD (2013) 18 NWLR (PT 1385) 188 AT 220*** relying on the case of ***IHEANACHO V UZOCHUKWU (1997) 2 NWLR (PT.487) 257 @ 269-270 H-A*** where the Supreme Court set out the Procedure for Recovery of Premises as follows: *"A landlord desiring to recover possession of premises let to his tenant shall: (a) Firstly, unless the tenancy has already expired, determine the tenancy by service on the tenant an appropriate notice to quit. (b) On the determination of the tenancy, he shall serve the tenant with the statutory 7 day's notice of intention to apply to the Court to recover possession of the premises. (c) Thereafter, the landlord shall file his action in Court and may only proceed*

to recover possession of the premises according to law in terms of the judgment of the Court in the action…it is only when the tenancy has not expired that there will be need to determine same by notice to quit. It is obvious that if at the time the landlord seeks to recover his premises, the tenancy had already expired, it is reasonable to hold that there will be no need for a quit notice. All the landlord would be required to serve on the tenant would be the statutory day's notice of intention to apply to the Court to recover possession of the premises."

It is the evidence of the counterclaimant that the claimant was first issued a notice of owners' intention the 5th of February, 2019 which is the exhibit A2 & D10, and subsequently another was issued the 16th May, 2019 which is the exhibit D12. A careful consideration of the exhibits, it is clear that the exhibits D10 & A2 was cancelled by the issuance of exhibit D12 and service of same on the defendant/claimant. The Exhibit D12 is reproduced hereunder:

Form E

NOTICE TO TENANT OF OWNER'S INTENTION TO APPLY TO RECOVER POSSESSION

TO: MRS OLUSHADE TONADE

QMA PARK,

IBB BOULEVARD

MAITAMA,

ABUJA.

Dear Madam,

I, Soji Toki Esq. Legal Practitioner to Pastor (Mrs) Iquo Eyo, owner, hereby give you **NOTICE**, that unless peaceable possession of the premises of the **QMA PARK, IBB BOULEVARD, MAITAMA, ABUJA** which were held of the said owner under a yearly tenancy which was determined by notice to quit on the 31st of December, 2018 and which premises are now held over and detained from the said owner be given to the owner on or before the expiration of seven clear days from the service of this NOTICE, I, Soji Toki esq, shall on Monday, the 27th day of May, 2019, at 11 o'clock of the same day, at maitama, Abuja, apply to the court to issue a warrant directing an appropriate person to enter and take possession of the said premises and to eject any person there from.

Dated this 16th day of May, 2019

Signature

Soji Toki, Esq.

Legal Practitioner to the above named owner

Take notice also that this notice cancels the previous notice to tenant of owner's intention to apply to recover possession.

A holistic reading of exhibit D12 issued the 16th May, 2019 shows that exhibits A2 & D10 has been invalidated. It therefore means exhibits A2 &

D10 has no relevance in this present suit. It is of note that this suit was filed by the claimant the 19th February, 2019 and exhibit D12 was issued on the 16th May, 2019. It is also in evidence that the counterclaimant was not served with the claimant's process until 4 months after instituting the suit and both parties had had (4) four meetings or so without the claimant mentioning the pending suit. The counterclaimant as DW2, while being cross examined by the claimant's counsel stated as follows:

Question: the claimant was the 1st person to enter the park in question and commenced development of same up till date.

Answer: yes, I started the development; I had put caterpillars to remove debris, because there was storey building which was demolished.

Question: at the instance of the claimant, you met with 5 different pastors, in an attempt to solve the issue.

Answer: Yes sir, but not completely at their instance.

Question: Please tell the court the year, month where the last of this meeting took place, if you remember.

Answer: I may not remember the last date; maybe sometime in May, 2019 and I initiated those meeting.

Question: the plaintiff filed this writ of summons on the 19th February, 2019 and you were not served with the process until May, 2019;

Answer: Yes;

Question: that is a period of 4 months after filing;

Answer: Yes;

Question: Did you ever inquire from the claimant why she held back from serving you, after four months of filing

Answer: No, I couldn't have, because I wasn't aware that anything was served;

Question: See exhibit A2 – it is from your lawyer and served at your instance;

Answer: Yes;

Question: Read, I Soji Toki… (Exhibit A2);

Answer: Read… Exhibit A2;

Question: From that letter it was served 6th February, 2019.

Answer: Yes;

Question: With the above would you have expected the claimant to fold her arms and wait to be thrown out of the park;

Answer: She had already been given notice, there was a follow up. I would have expected her to move because she had been given a notice

I have had to take judicial notice of all the processes filed in this suit, as I stated in the beginning of this Judgment that the matter was transferred to this court under the Hand of the Hon. Chief Judge FCT. It is contained in the file a motion ex parte filed the 14/5/19 by the claimant praying for the leave of the court to serve the writ of summons and other court processes on the defendant via substituted service. The application was to be heard the 20/6/19. However on the said date, both counsel were present before the previous court, hence there was no need to hear the ex parte application. It is evident that as at the 14/5/19, the counter claimant wasn't aware that a writ had been taken against her by the claimant. This is also clear from the testimony before the court, particularly from answers elicited during the cross examination of Dw2.

It is the law that he who comes to equity must come with clean hands. A tenant/lessee will not expect the landlord/lessor to fold it arms where the lease/tenancy has expired and the lessee/tenant continues to hold over without taking the necessary steps, more so when it can be deduced that both parties are no more on the same page. It is within the landlord's rights to approach the court to seek redress against his tenant where doing so becomes necessary, and part of the conditions precedent required to be fulfilled before a landlord can exercise his right to approach the court for possession is the issuance and service of the requisite statutory notices. The landlord can therefore not be denied of the right to exercise such right

simply because the tenant who took out a writ and did not serve the counterclaimant until after four months or so, about the same time when the landlord's notice of intention to go to court to recover possession was served on the tenant. The claimant did not deny the existence of exhibit D12 issued the 16th May, 2019 by the counter claimant. It was argued by learned counsel to the claimant that the issuance of statutory notices does not apply in this case, because the claimant had a lease over the park for 7 years. He stated that the authorities of ***SPLINTERS NIG LTD V OASIS FINANCE LTD & AYINKE STORES LTD V ADEBOGUN*** relied on by the defence counsel are not applicable to the instant case, as those cases dealt with issue of yearly tenancy and not leasehold. The question that comes to mind; how is the counterclaimant expected to recover possession from the claimant after the expiration of the lease created by exhibit A5?

It is trite that for a landlord to recover possession, the issuance and service of Form E is condition precedence to igniting the jurisdiction of this court. As there was no proper lease agreement between the parties in this case, I will have to rely on the exhibit that created a lease relationship between the parties which only stated the consideration, duration and names of parties. The lease commenced in January 2012 and expired in December, 2018. It therefore means the lease created via exhibit A5 expired by effluxion of time. ***HELIOS TOWERS (NIG) LTD V MUNDILI INVESTMENTS LTD*** [supra] The 7 year lease came to end automatically in December 2018 and the refusal of the

claimant to surrender the subject property to the counterclaimant, made her a tenant at sufferance. See Paras 10a, c, d, 11, 12, 13 &14 of the Dw2 witness statement on oath dated 10/6/20. It is a settled principle of law that where an adversary or a witness called by him testifies on a material fact in controversy in a case, the other party should, if he does not accept the witness's testimony as true, cross-examine him on that fact, or at least show that the he does not accept the evidence as true, where, he fails to do either, a court can take his silence as an acceptance that the party does not dispute the facts. After all, one of the main purposes of cross-examination is to test the veracity of a witness. See ***ADAKU AMADI V EDWARD N. NWOSU (1992) LPELR 442 (SC)***

It is the evidence of Dw2 that she issued another Notice of Owners' Intention to Apply to Court to Recover Possession on the defendant dated the 16th May, 2019 and served same day. See (Para 25 witness statement on oath dated 10/6/19) this was not controverted by the claimant; also no option to renew clause or conditions to be complied with at the expiration of the lease agreement was stated in Exhibit A5, I therefore hold that the Notice to Tenant of Owners' Intention to Recover Possession exhibit D12 is competent and valid; the counterclaimant having discharged the burden placed on her, she is hereby entitled to the possession of the Park and I so hold.

Learned counsel to the counterclaimant submits that the counterclaimant engaged the services of an expert to prepare a report on the annual rental value of the property, which is the exhibit D1 and that by the report the annual rental value of the property is #8,500,000.00 and if it's divided by 12, the month's rate is #708,333.33. He further stated that the claimant has not presented any evidence to rebut the opinion of the expert and urged the court to grant the relief. I shall now determine the probative value of exhibit D1. This exhibit was tendered through the Dw1 Ibrahim Hassan, an Estate Surveyor, whose consulting firm Hassan & Hassan was engaged by the counterclaimant/defendant the May 13, 2019 during the pendency of this suit. The consulting firm was to carry out the rental valuation of the leasehold interest in other to determine the Annual Rental Value of the Park situated IBB Boulevard, Maitama District Abuja, FCT. The valuation report was submitted to the counterclaimant the 15th May, 2019. I will not rely much on the report, because at the time the evaluation was carried out by Dw1, the claimant was not present. It is contained in the valuation report, that upon the inspection undertaken the Tuesday 14th May, 2019, the subject property is a recreational park and it comprises of tents, halls & decorations, food & treats, night club, kiddies play, computer games, cinema and football pitch fenced round. All these developments mentioned in exhibit D1 were not executed by the counterclaimant. Thus the counterclaimant is not entitled to the revenue generated from those developments. The case of the counterclaimant is like reaping from where

she didn't sow, it is clear that the exhibit D1 was also made in anticipatory of the counterclaim and also at the instance of the Dw2 who is an interested party to the suit and it will be most unfair and unjust for the court to grant Relief B on the basis of the report. The Dw1 cannot be referred to as an expert witness in this instance. Also the said exhibit D1 being a document made during the pendency of the case is an inadmissible document. I further adopt the argument of the counsel to the claimant with regards to exhibit D1 and same is hereby expunged from the court's record. Relief B is dismissed accordingly.

It is the evidence of the counterclaimant in Para3g of her witness statement on oath dated the 10/6/2019: that it was after the payment of #1,000,000.00 that the claimant visited me with her husband. The claimant's husband who is an Architect said that the one year agreement was not realistic, that he wanted to tastefully develop the park. The claimant paid another one million naira and made other payments about 4 times between 2010 and 2015 to me.

It is not in contention that the claimant is still on the property and has being in arrears of rent since January 2019 till date; there is no other document that parties agreed to increase or review the rent, the only document the court can rely on in determining the amount due to the counterclaimant for the use and occupation of the Park by the claimant from January 2019 till date, is exhibit A5 signed by both parties and by way of calculation the total

sum is #11,000,000.00 for the period of 7 years. Thus in dividing the sum by 7 years, the result per annum is #1,571,428.57, in further dividing it by 12 months, makes the monthly rate at #130,952. 38k. I therefore hold that the counterclaimant is entitled to #130,952.38k per month for the use and occupation of QMA Park IBB Boulevard, Maitama Abuja from 1st January 2019 till until possession is delivered.

Relief C which borders on 2% interest on the sum of #708,833.33 fails.

Relief D is the claim by the counterclaimant for the sum of #5,000,000.00 being solicitors' fee for defending the main action and for prosecuting the counter claim. I adopt the argument of the claimant's counsel. Also the exhibit D4 is of no moment and lacks the basis to award the solicitor's fee. It is an agreement between the claimant and her counsel. Thus the relief D fails and is dismissed.

Relief E is for an order directing the defendant to the counterclaim to pay the Ground rents and other charges from 2012 in respect of the subject matter to the appropriate government agencies. It is the argument of counterclaimant's counsel that parties had an agreement via exhibit D15; he stated that the claimant agreed to pay ground rents whilst in possession of the Park. I find exhibit D15 inadmissible; there is no signature of parties on the document and same is hereby discountenanced with. The claim is accordingly dismissed.

Also Exhibits D7 & D5 are photocopies of public documents; the only way the documents can be admitted in evidence is, if they were certified. There is no certification on the exhibits D5 & D7; they are hereby expunged from the court's record. The claim for general damages is unproved and same is dismissed.

In effect, the claims of the claimant fails and are dismissed accordingly, whilst the counter claim succeeds in part and for the avoidance of doubt, they are stated as follows:

1. The claimant shall give possession of the Park known as QMA Park IBB Boulevard Maitama Abuja to the counterclaimant forthwith.
2. The claimant/defendant to the counterclaim shall pay to the counter claimant the sum of #130,952.38k per month for the use and occupation of QMA Park IBB Boulevard, Maitama Abuja from the period of 1st January, 2019 until possession is delivered.
3. Reliefs C, D, E, F and G are dismissed.
4. Parties are to bear the cost.

ASMAU AKANBI – YUSUF

HON JUDGE

APPEARANCES:

Parties present

Idiagbonya Esq. for the claimant

Soji Toki Esq. for the counterclaimant