IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF

SUIT NO: FCT/HC/CV/2810/16

BETWEEN:

BINLAQ INTERNATIONAL LIMITED ……PLAINTIFF

AND

1. FEDERAL MINISTRY OF YOUTHS & SPORTS)
2. NATIONAL SPORTS COMMISSION)…….DEFENDANTS

JUDGMENT

This suit is predicated on the Consent Judgment delivered by Senchi, J. in Suit No. FCT/HC/CV/2025, between the Plaintiff and the 2nd Defendant herein. When the Plaintiff observed that the 2nd Defendant failed to honour the terms of the Consent Judgment, it commenced enforcement of the said Judgment. At that point the 1st Defendant herein who is the Supervising Ministry of the 2nd Defendant, intervened with a firm undertaking to pay the outstanding rent on the demised property but failed to live up to its promise. At the end of the day, possession was recovered through the process of the Court at personal cost to the Plaintiff. The Plaintiff is also aggrieved that the 2nd Defendant failed to observe the end of

terms obligations contained in the tenancy agreement which brought parties into contractual relationship. It therefore instructed its Solicitors to file this action and claim against the Defendants as set out in paragraph 19 of the Statement of Claim as follows:

1. **The sum of N6,500,000.00 (Six Million, Five Hundred Thousand Naira Only) representing total mesne profit owed to the Plaintiff following the Defendant's occupation of the premises known and situate at Plot No. 3130, Aliyu Abubakar Close (also known as No.6 Lasalle Close, Off Shehu Shagari Way, Maitama, Abuja) from the 11th of April, 2016 to the 13th of July, 2016 outside the terms of rent which expired on 11th April, 2016.**

2. **The sum of N4,695,000.00 (Four Million, Six Hundred and Ninety-Five Thousand Naira Only) as cost for the repair and restoration of the premises to a tenantable state.**

3. **The sum of N200,000.00 (Two Hundred Thousand Naira Only) being cost of eviction of Defendants from Plot No. 3130 Aliyu Abubakar Close (also known as No.6 Lasalle Close, Off Shehu Shagari Way, Maitama, Abuja).**

4. **Post-Judgment interest of 10% (Ten Percent) on the said separate sums N6,500,000.00 (Six Million, Five Hundred**

Thousand Naira Only), N4,695,000.00 (Four Million, Six Hundred and Ninety-Five Thousand Naira Only) and the sum of N200,000.00 (Two Hundred Thousand Naira Only) respectively from the date of Judgment until full liquidation of the Judgment debt.

5. **Cost of action in the sum of N1,000,000.00 (One Million Naira Only).**

The Writ of Summons was duly served on the Defendants on the 6th day of March, 2017 but they failed and/or neglected to file an answer to Plaintiff's claim. Nevertheless, the Defendants were represented by Counsel throughout the course of this matter.

At plenary, Mr. Yusuf Jafar, the General Manager of the Plaintiff testified as PW1 and tendered documents admitted as exhibits BIL1–BIL9. The witness was duly cross-examined by Mr. Emmanuel Okibe Esq of counsel for the Defendant. At the close of the case for the Plaintiff, Mr. Okibe informed the Court as follows:

"We intend to defend this suit."

The Court accordingly adjourned for defence, but it turned out that the Defendants had no intention to defend the action as they failed to file statement of defence. They were eventually foreclosed on the

application of learned Counsel to the Plaintiff and the matter adjourned for adoption of final written address.

The learned Counsel to the Defendant in his written address identified one issue as arising for determination. The issue is:

> **"Whether by the evidence led so far, the Plaintiff has made a case to be entitled to the reliefs sought from this Honourable Court"**

On his part, the learned Counsel to the Plaintiff in his address filed with leave of Court is of the view that the sole issue for determination ought to be:

> **"Whether having regards to the pleadings and evidence led at the trial, the Plaintiff has proved its case and is entitled to all the reliefs sought vide its Statement of Claim."**

The Plaintiff's Counsel also filed a Reply on points of Law in reaction to the Defendant's final written address.

Looking at the respective issues formulated on behalf of parties, I must say that they are not dissimilar but I form the view that Plaintiff's issue is apt and in the circumstances I shall adopt same in the determination of this matter and I so hold.

For the records, when this matter came up for adoption, the learned Counsel to the Plaintiff urged upon the Court to discountenance the final written address filed on behalf of the Defendants on the ground that the process was not sealed and stamped in line with the Rules of Professional Conduct. That the document attached to the process belonged to a different person and not Mr. Danjuma Muhammad who settled the disputed final written address on behalf of the Defendants. Learned Counsel to the Plaintiff cited the case of **NYEMSON WIKE V. DAKUKU PETERSIDE (2016) 6 S.C 137** to support his submission. However, the learned Counsel to the Defendants submitted that failure to affix stamp and seal is a technical argument which cannot vitiate the final written address of the Defendants.

As a take off point, I have calmly considered the submission of learned Counsel to the Plaintiff on the failure of Mr. Danjuma Muhammad who signed the final written address of the Defendants failure to affix his stamp (i.e. Nigeria Bar Association stamp) as required by the Rules of Professional Conduct. I have examined the process and I discovered that three Counsels were listed on the face of the document. They are Danjuma Muhammad, Okibe Emmanuel and Philip Chechet in that order. However, it was clearly indicated by a written mark that the process was executed by Danjuma

Muhammad. It is also not in dispute that the process was not stamped and sealed as required by the Rules of Professional Conduct. I have also seen the Access Bank tellers attached to the disputed final written address which prima facie suggest that the payee (Mr. Chechet Sokfa Philip) has paid his Bar Practicing Fee for the year 2019 and has equally applied for the issuance of stamp and seal which may not have been delivered at the time of filing the disputed final written address of the Defendants. The Access Bank tellers may be a good ground to excuse the failure to comply with the requirement for stamp and seal if the process was signed by Mr. Chechet Sokfa Philip. But that is not the case as rightly submitted by the learned Counsel to the Plaintiff.

However, it is my considered view that the attack on the Defendants' final written address is technical in nature. This is so, because it is trite Law that Counsel's final address is merely to assist the Court in its onerous duty of doing substantial justice between parties. It therefore follows as night follows the day that whether parties present final written address or not the Court is bound to do ensure that justice is done in the circumstances of the matter. If that be the case, the failure of the learned defence counsel to affix his stamp and seal to the final written address filed on behalf of the Defendants is not a critical issue in the determination of the dispute before the Court. Accordingly, I overrule the learned Counsel to the Plaintiff

and affirm the validity of the disputed process. This now takes me to the lone issue for determination, to wit:

> **"Whether having regards to the pleadings and evidence led at the trial, the Plaintiff has proved its case and is entitled to all the reliefs sought vide its Statement of Claim."**

In the determination of Plaintiff's claims, it goes without saying that the burden of proof is on the Plaintiff to proof its entitlement to the reliefs submitted to Court. Put in another way, it is a fundamental principle of law that he who asserts must prove. The case of the Plaintiff will fail if the burden is not discharged. On this point of law, see: Sections 131 and 133 of the Evidence Act 2011 and the following cases:

> **EHOLE V. OSAYANDE (1992) 6 NWLR (PT 249) 524**; and
> **ADEDE V. OLOSO (2007) 5 NWLR (PT 1026) 196.**

Now the first claim of the Plaintiff is the sum of N6,500,000.00 (Six Million, Five Hundred Thousand Naira Only) representing total mesne profit owed to the Plaintiff following the Defendant's occupation of the premises known and situate at Plot No. 3130 Aliyu Abubakar Close (also known as No.6 Lasalle Close, Off Shehu Shagari Way, Maitama, Abuja) from the 11th of April, 2016 to the 13th of July, 2016 outside the terms of rent which expired on 11th April, 2016.

The evidence in support of this claim is that parties entered into a tenancy agreement on 12th April, 2013 as embodied in exhibit BIL1. The annual rent mutually agreed by parties was N26,400,000.00 (Twenty Six Million, Four Hundred Thousand Naira Only). When dispute arose between parties over the demised premises, the Plaintiff filed an action against the 2nd Defendant for recovery of possession and mesne profit. The dispute was settled amicably and the Court entered a Consent Judgment pursuant to the terms of settlement filed by parties. A Certified True Copy of the Judgment was admitted as exhibit BIL 2. Paragraphs 1 to 3 of the terms adopted as Consent Judgment on the face of exhibit BIL 2 reads as follows:

1. **"The parties agree that the Defendant shall on or before the 31st of December, 2015 pay to the Plaintiff the full rent sum of N26,400,00.00 (Twenty-Six Million, Four Hundred Thousand Naira) representing the rent for the term of one year certain running from 12th April, 2015 to 11th April, 2016.**
2. **Failure to make the payment in paragraph (1) above, shall result in the immediate ejection of the Defendant from the premise by the Bailiff of this Honourable Court without further action.**

3. **The parties agree that upon the payment in paragraph (1) above, the Defendant's tenancy shall be deemed renewed for the term of one year certain running from the 12th of April, 2015 to 11th April, 2016.**

The case of the Plaintiff is that the 2nd Defendant contrary to the terms of the above Judgment, failed to deliver vacant possession on 11th April, 2016. That possession was only recovered on 13th July, 2016 through the enforcement process of this Court. Plaintiff's first leg of claim as set out above is therefore meant to recover mesne profit for the extra three months of unauthorized occupation of the demises premises. There is no defence to this claim as the Defendants did not file statement of defence. Learned counsel to the Defendants was also silent on this head of claim in his final written address.

The Law is settled, that mesne profit may only be claimed where it is shown as in this case that the Defendant is in unlawful occupation after the lawful determination of the tenancy relationship between parties. The award is a matter of evidence and may not necessarily be based on the last rent paid by the Defendant as it could be more or less. On this point of Law, see the case of **OGUGUA V. JIMOH (2018) LPELR-46649 (CA).**

Having not contested this claim, and considering the fact that the mesne profit claimed by the Plaintiff is based on the last rent paid by the 2nd Defendant, I am satisfied that this claim is proved and accordingly granted as prayed.

The next relief is for the sum of N4,695,000.00 (Four Million, Six Hundred and Ninety-Five Thousand Naira Only) as cost for the repair and restoration of the premises to a tenantable state. This claim is no doubt in the realm of special damages. If that be the case, the Plaintiff has a mandatory duty to furnish the Court with sufficient particulars of the claim and cogent proof of same.

The Law on this point was recently restated by His Lordship Bage, JSC in the case of **AJIGBOTOSHO V. R.C.C (2018) LPELR-44774 (SC)** as captured below:

> **"To start with, special damages are such damages as the law will not infer from the nature of the act as they do not follow in the ordinary course, but exceptional in their character and therefore must be claimed specially and proved strictly.**
>
> **For a claim in the nature of special damages to succeed, it must be proved strictly and the Court is not entitled to make its own estimate on such a claim. It should be noted that special damages should be specifically pleaded in a**

manner clear enough to enable the Defendant know the origin or nature of the special damages being claimed against him to enable him prepare his defence. See DUMEZ (NIG) LTD. VS OGBOLI (1972) 1 All NLR 241"

I have read the Statement of Claim filed in support of this claim and to facilitate ease of understanding, I shall reproduce paragraphs 14 to 17, to wit:

14. The Plaintiff also avers that Clause 2(xii) and 2(xiii) of the Tenancy Agreement were breached by the 2nd Defendant. The said clauses covenanted by the 2nd Defendant are:-

(a) At the expiration or sooner determination of the said term, to peaceably yield up possession of the property to the Landlord in a state of tenantable condition, and not to remove any fixures, fittings or appurtenances except the Tenant's fixures or appurtenances which shall be removed in a manner that shall not damage the property.

(b) To redecorate the property internally on determination or expiration of the tenancy.

15. Following the ejection of the Defendants from the premises, the Plaintiff by its Surveyor inspected the premises and found various levels of disrepair of the premises whose responsibility

to keep tenantable was that of the 2nd Defendant under the terms of the Tenancy Agreement and which repairs the Defendants have failed, refused and/or neglected to carry out.

16. The said repair work necessary to remedy the disrepair of the premises and put the premises back in a tenantable state stands at a total cost of N4,695,000.00 (Four Million, Six Hundred and Ninety-Five Thousand Naira). The Plaintiff hereby pleads the full particulars of the cost as contained in the final accounts of contracts and shall rely on same at trial for various heads of work carried out.

PARTICULARS OF SPECIAL DAMAGES

17. The Plaintiff pleads that the basis for the calculations of aforementioned cost is as follows:

(a) Replacement of 3 damaged security doors within the premises.

(b) The re-writing of the building and changing of vandalized distribution electronic boards damaged by bypassing for surface connection by the 2nd Defendant in the rooms, within and outside the premises.

(c) Cost of material for re-plastering and patching of damaged walls which damage was created by the 2nd Defendant's surface wire connections.

The pleadings set out above represent the foundation of the Plaintiff's claim of N4,695,000.00 (Four Million, Six Hundred and Ninety-Five Thousand Naira Only) as cost for the repair and restoration of the demised premises to a tenantable state. The PW1 tendered series of receipt in support of the claim. The learned counsel to the Defendants submitted that the claim is mischievous and premature as the Plaintiff failed to inform the Defendants of the alleged damages in disputes in compliance with the letters and spirit of the Tenancy Agreement (i.e. exhibit BIL1). The learned Counsel to the Defendants further urged upon the Court to hold that this head of claim is premature and not proved, even though the Defendants did not file a defence to the Plaintiff's claim. Some judicial authorities were cited by learned Counsel to support this line of submission.

I have carefully considered this head of claim which is predicated on the Tenancy Agreement (exhibit BIL1) between parties, and I must say that the Plaintiff thoroughly misconceived the place of exhibit BIL1 in this proceeding. The Plaintiff seems to have forgotten that when dispute arose between parties over the obligation of parties

under exhibit BIL1, the Plaintiff approached this Court vide Suit No. FCT/HC/CV/2025/2015 (**per Senchi, J**). Parties eventually settled the dispute amicably and filed terms of settlement which was adopted by the Court as Consent Judgment, (exhibit BIL2). The point must be made that the moment parties filed terms of settlement in the previous suit, the Tenancy Agreement executed by parties has been effectively abdicated and no longer relevant in the determination of the obligation of parties under the tenancy contract. Any reference to the Tenancy Agreement will have the effect of re-writing the terms of the Consent Judgment. Interestingly, parties opted to dispense with end of terms obligation in their terms of settlement. If that be the case, it is wrong for the Plaintiff to present this head of claim which is not envisaged under exhibit BIL2 (i.e. Consent Judgment) and I so hold.

I am not done with this head of claim as I intend to look at the merit of the claim for the purpose of argument. I have carefully perused the pleadings in support of the claim, and I form the view that the pleadings of the Plaintiff fell short of the requirement of the Law to ground a claim in special damages. For the avoidance of doubt, paragraph 17 of the Statement of Claim set out above did not put any price tag on the various types of repairs carried out by the Plaintiff. The Plaintiff simply pleaded that the sum total of the work done is N4,695,000.00 (Four Million, Six Hundred and Ninety-Five

Thousand Naira Only). What the Plaintiff did was to simply present an estimate of the repair it carried out without any detailed particulars of the cost implication.

In the case of **AJIGBOTOSHO V. RENOLD CONSTRUCTION CO. LTD (2018) LPELR-44774 (SC), Ejembi-Eko, JSC** in his contributory Judgment, eloquently stated the law as follows:

> **"It is settled and quite trite that special damages claimed must be specifically pleaded, and they must be strictly proved. The party pleading special damages is enjoined to particularize in his pleading the item(s) of special damages claimed. He must base his claim on precise calculation and give the Defendant access to the facts on which such calculation is based. This requirement satisfies one of the twin pillars of fair hearing that is audi alteram partem.**
>
> **The essence is that the defence shall not be prejudiced or put to embarrassment. The requirement enables the defence to prepare to meet frontally the case put up against him on the special damages claimed.**
>
> **<u>Claim for special damages based on mere estimates or estimation of the Plaintiff is not precise. It is as</u>**

<u>good as an exercise in mere conjecture, a guess work, which clearly is the antithesis of precise calculation.</u>"

(Underlining supplied for emphasis)

Arising from the from the clear position of the Law set out above, it is clear that the estimated sum claimed as cost for the repair and restoration of the demised premises to a tenantable condition cannot be granted. In reaching this conclusion, I have taken into account the place and relevance of exhibits BIL4, BIL5, BIL6, BIL6A, BIL7, BIL8 and BIL8A which are series of quotations and receipts issued by different suppliers of building materials to the Plaintiff at various times, and I form the view that the exhibits are not supported by pleadings. To demonstrate the futility of the aforementioned exhibits, I will reproduce the contents of exhibit BIL5. The exhibit is a receipt issued to the Plaintiff by Philip & Sons dated 14/08/2016 and the description of goods sold to the Plaintiff on the face of the exhibit, are as follows:

1. **20 drums of Accurate Paint at the rate of N2,500.00 per unit = N50,000.00**
2. **15 bags of Top Molder Cement at the rate of N4,600.00 per unit = N69,000.00**
3. **15 four liters of Top Bond at the rate of N2,500.00 per unit = N37,500.00**

4. **10 bags of cement at the rate of N1,550.00 per unit = N15,5500.00**
5. **10 drums of Dulux B/White at the rate of N25,200.00 per unit = N252,000.00**
6. **25 drums of D/Emulsion paint at the rate of N22,350.00 per unit = N558,750.00**
7. **Hiring of Scaffold = N250,000.00**
8. **Labour = N820,000.00**

   TOTAL–N2,052,750.00 (Two Million, Fifty-Two Thousand, Seven Hundred & Fifty Naira Only)"

My take on this development, is that the Plaintiff missed the point when it supplied evidence by way of receipt without furnishing the Court with relevant pleadings to support the evidence put forward at trial. It is now trite law, that evidence not supported by pleading goes to no issue. I refer to the case of **IBANGA & ORS V. USANGA & ORS (1982) 5 S.C. 103** where Irikefe, Jsc held as follows:

> **"It is now settled law, that in any action in the High Court, the parties are bound by their pleadings. Their case stands or falls by the averments in those pleadings and the evidence adduced in support of those averments. Any evidence not supported by the pleadings should be ignored as it goes to no issue."**

See also **AJIGBOTOSHO V. RENOLD CONSTRUCTION CO. LTD (supra)** where the Supreme Court held that:

> **"Claim for special damages based on mere estimates or estimation of the Plaintiff is not precise. It is as good as an exercise in mere conjecture, a guess work, which clearly is the antithesis of precise calculation."**

In this case, the Plaintiff in the Statement of Claim merely lump its claim for special damages for repairs in the sum of N4,695,000.00 (Four Million, Six Hundred and Ninety-Five Thousand Naira Only) without supplying the particulars as required by Law. This is fatal to the grant of the claim. Whichever way the claim for repair and restoration of the demised premises is viewed, it has no merit and accordingly dismissed.

The Plaintiff is also claiming the sum of N200,000.00 (Two Hundred Thousand Naira Only) as cost of eviction of the 2nd Defendant from the demised premises. I have carefully considered this head of claim, and I find it important to refer to paragraph 12 of the Statement of Claim where it was pleaded as follows:

> **"The Plaintiff further avers that it expended the sum of N200,000.00 (Two Hundred Thousand Naira Only) as costs, fees and expenses of and incidental to the issue and execution of the Writ of Possession issued by the Honourable Court in the process of evicting the Defendants from the premises."**

The testimony of the PW1 in support of the above pleading is substantially the same, and for ease of understanding, paragraph 14 of the PW1's witness statement on Oath is set out hereunder:

> **"I am also aware that the Plaintiff Company expended the sum of N200,000.00 (Two Hundred Thousand Naira Only) as costs, fees and expenses of and incidental to the issue and execution of the Writ of Possession issued by the Honourable Court in the process of evicting the Defendants from the premises."**

I have considered both the pleadings and evidence in support of this head of claim, and I form the view that it is deficient. For example, the Plaintiff in its pleading stated that the sum of N200,000.00 (Two Hundred Thousand Naira Only) claimed is for costs, fees and incidental expenses. However, the Plaintiff failed to plead relevant facts that constitute the costs, fees and incidental expenses. In a related development, there is no evidence to support the aforementioned expenses. Apart from the bare deposition of the PW1, there is nothing by way of documents to support this bare assertion. Consequently, I am of the view that this head of claim is not proved. It is accordingly refused and dismissed for want of merit.

The Plaintiff is also claiming the sum of N1,000,000.00 (One Million Naira Only) as cost of this action. This claim is in my view thoroughly misconceived, because the pleadings and evidence led in supported is targeted at recovery of Solicitors Fees which is not the same as cost of

action. For the avoidance of doubt, cost is awarded to a successful party while solicitor fee is an aspect of special damages which must be strictly proved. On this point of Law, I refer to **KLM ROYAL DUTCH AIRLINES V. IDEHEN (2017) LPELR- 43575 (CA)** where the Court held thus:

> **"Cost of the action is different from the cost of prosecuting the action, which is in the form of special damages. If the Court says cost of the action, it is the general cost that follows event and which is generally awarded a party that succeeds at the trial. The award of cost is at the discretion of the Court and should be exercise on settled materials before the Court. Generally, cost follows event and a successful party is entitled to cost unless there is a special reason for depriving him of his entitlement."**

From the foregoing development of the Law, it is clear that the claim for cost of action in the sum of N1,000,000.00 (One Million Naira Only) as presented by the Plaintiff is misconceived and liable to be, and is hereby dismissed for want of merit.

The last claim is for 10% Post Judgment interest. The power to grant this head of claim is statutory as it is donated by Order 39 Rule 4 of the Rules of this Court 2018, and it is designed for the benefit of a victorious party. Evidence need not be given for it to be awarded. However, the Court has a discretion to decide whether or not to award interest on Judgment debt. In this case, I find merit in awarding 10% Post Judgment interest on

the sum of N6,500,000.00 (Six Million, Five Hundred Thousand Naira Only), and I so Ordered.

In the final analysis, the Plaintiff's case succeed in part and for avoidance of doubt, I make the following Orders.

1. **That I award mesne profit in the sum of N6,500,000.00 (Six Million, Five Hundred Thousand Naira Only) in favour of the Plaintiff and against the Defendant for the unauthorized occupation of the Plaintiff's property between 11th April, 2016 and 13th July, 2016.**
2. **Reliefs 2, 3 and 5 are refused and dismissed for want of merit.**
3. **10% Post Judgment interest is awarded on the Judgment debt from the date of Judgment and until the Judgment sum is fully liquidated.**

SIGNED
HON. JUSTICE HUSSEINI Y. BABA
(PRESIDING JUDGE)
30/09/2020

APPEARANCE

Babayemi Olaniyan, Esq, for the Plaintiff
Okibe Emmanuel, Esq, for the Defendants

SIGNED
HON. JUSTICE HUSSEINI Y. BABAz
(PRESIDING JUDGE)
30/09/2020