

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT APO-ABUJA**

**ON 17<sup>TH</sup> DAY OF DECEMBER 2020**

**BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI**

**PRESIDING JUDGE**

**SUIT NO: CV/1720/19**  
**MOTION NO: M/8867/19**

**BETWEEN:**

**ACOUNS NIGERIA LIMITED ..... CLAIMANTS/APPLICANT**

**AND**

**COL. ABIODUN UWADIA (RTD) ..... RESPONDENT**

**ABDULHALEEN AMIN FOR THE CLAIMANT**

**JUDGMENT**

The Plaintiff claims from the Defendant vacant possession of the 4 bedroom duplex with all its appurtenances (the subject matter of this suit) situate and being at House No 4.17 Gana Street, Stallion Estate, Maitama Abuja.

- (i) The sum of N10,000,000 (Ten Million Naira) only being the arrears of the rent sum for the tenancy period between 1<sup>st</sup> December 2017 and 30<sup>th</sup> November, 2018, which the Defendant owned the Claimant.
- (ii) The sum of N833,333.34 (Eight Hundred and Thirty Three Thousand Three Hundred and thirty three Naira, Thirty-four kobo) only on

monthly basis being the mesne profit accruable to the Claimant from the Defendant for holding over to the Claimant's property as from the 30<sup>th</sup> November, 2018 when the tenancy between the parties herein expired and was determined until vacant possession is delivered up to the Claimant.

- (iii) The sum of N750,000 (Seven Hundred and Fifty Thousand Naira) only being ordinarily avoidable expenses the Defendant made the Claimant to incur as professional fee in this suit as a result of the Defendant's refusal to pay the arrears and yield peaceable possession of the Claimant's property.
- (iv) The sum of N500,000 (Five Hundred Thousand Naira) only as general damages and cost of this suit.
- (v) 10% post judgment interest until final and full liquidation of the judgment sum."

By order of court the Defendant was served the originating and all court processes by substituted means, by pasting at entrance door of the property the subject matter of this suit.

The Defendant however neither entered appearance, nor filed any processes in those proceedings.

The Claimant called one witness Emekalhezue, its marketing manager in proof of its case.

He adopted his witness statement on oath deposed on 25<sup>th</sup> April 2019, wherein he testified inter alia that the Claimant is the landlord and owner of the 4 bedroom duplex, with its appurtenances situate at Home No 4, 17 Gana street Station Estate, Maitama Abuja.

That the Claimant appointed Mr. A Amin and his firm Abdulhaleen Amin & Co as her attorney and solicitors to take over the superintendence of the property, issue all quit notices and other correspondence, recover outstanding rent and evict tenants therefrom (see Exhibit P1)

That the Defendant was a tenant in the said property vide a tenancy agreement made between the parties for a fixed period of 2 years from 1<sup>st</sup> December 2014, ending on 30<sup>th</sup> November 2016 at the rent N20, 000, 000.00 for two years. See Exhibit P2.

That upon the expiration of the tenancy on 30<sup>th</sup> November 2016, the Defendant renewed the tenancy for the period 1<sup>st</sup> December 2016 to 30<sup>th</sup> November 2017 at N10m per annum on the same terms as in Exhibit P2.

That the Defendant was in arrears for the period 2017/2018 in the sum N10m until its expiration on 30<sup>th</sup> November 2018 despite repeated demands by the Claimant and, the Claimant attorney. See Exhibit P3.

That the Defendant failed in his promise to pay.

Upon the Claimant's instruction to recover the arrears of rent and the premises the Claimant's attorney/solicitor issued to the Defendant quit notice served through the court on 12<sup>th</sup> March 2019 and 7 days Notice of owners intention to apply to recover possession also served through the court on 25<sup>th</sup> March 2019. See Exhibit P4A and P4B and Exhibits P5A and P5B, respectively.

Upon service of the said notices Exhibits P4A and P5A, the Defendant reached out to the Claimant's manager, Mr Emenike by phone, confirming receipt of the notices and pleading for more time to pay.

That the Defendant continues to hold over the premise without paying his arrears of rent and mesne profit.

That the money mesne profit accruable to the Defendant since, the expiration on 30<sup>th</sup> November 2018 is N833,333.34 calculated on the reserved rent sum of N10,000,000 per annum.

That the refusal of the Defendant to give up peaceable vacant possession of the property has caused the Claimant sundry avoidable expenses including N750,000 towards prosecution of this suit.

In his final written address in support of their case Mr Abdulhaleem Amin for the Claimant raised a sole issue for the court's determination thus;

“whether the Claimant is entitled to the reliefs sought as per her writ and statement of claim in the circumstances of this suit”.

Learned counsel submitted that the evidence of the Claimant is unchallenged therefore the burden of proof is discharged on minimal proof. He urged that the Claimant has by evidence, prove his case on a balance of probabilities and is entitled to the reliefs sought - See *Amasike V The Registrar General C.A.C (2010). All FWLR (pt 541) 406 at 1469 C S.7 Recovery of Premises Act CAC 544 IFN 1990; OYEWOO V KONWLAFE (2011), ALL FWLR (PT 578) 904 AT 924 F- G PART* Aboki JCA.

I have considered the case of the Claimant and her evidence before me.

As rightly submitted by Mr Abdulhaleem Amin for the Claimant, where evidence is unchallenged, the burden of proof on the Claimant is discharged on minimal proof. See **ASAFA FOODS FACTORY LIMITED V ATRAINE NIGERIA LTD & ANOR (2002) LPELR – 570 (SC), PAGE 29 PARAGRAPHS B-C UNITY BANK**

**PLC V ALIYU ADAMU & ORS (2013) LPELR – 22047 (CA) Per Sankey JCAPAGES  
40-41 PARAGRAPHS D-B.**

In the instant case I find the Claimant's evidence cogent and credible I therefore act on it.

From Exhibit P2 the Claimant and the Defendant had a landlord/tenant relationship for an initial fixed terms of 2 years from 1<sup>st</sup> December 2014 to 30<sup>th</sup> November 2016 at an annual rent of N10,000,000 i.e N20m for the 2 years.

The Defendant renewed his rent for 1<sup>st</sup> December 2016 to 30<sup>th</sup> November 2017 at N10m on the same terms.

The Defendant was in arrears of N10m for 2017/2018 (i.e 1<sup>st</sup> December 2017 to 30<sup>th</sup> November 2018. See Exhibit P3. He was served 7 days quit notice - Exhibit P4A. 7 days notice of owners intention to apply to recover possession. See exhibit P5A.

The Claimant having done all that is required of her in law to recover possession of the property in question from the Defendant, I enter judgment for the Claimant against the Defendant as follows;

The Claimant is entitled to vacant possession of the 4 bedroom duplex with all its appurtenances situate and being at House No 4, 17 Gana Street stallion Estate, Maitama Abuja.

The Defendant (and/or any person claiming through him) is ordered to give up immediate vacant possession to the Claimant.

The Claimant is entitled to arrears of rent on N10m for the period 1<sup>st</sup> December 2017 to 30<sup>th</sup> November 2018.

On mesne profit, in **ODUTOLA V PAPERSACK NIG LTD 2006 LPELR – 2259 SC PAGE 32-33 PARAGRAPHS D-A**, the court per Niki Tobi JSC (of blessed memory) described mesne profit as “the sum due to a landlord from the time his tenant ceases to hold the premises as tenant to the time such tenant gives up possession. See **DEBS V CENICO NIGERIA LTD (1986) 3 NWLR (PT 32) 846**.

Mesne profits are the rents and profits which a trespasser has, or might have received or made during his occupation of the premises, and which therefore he must pay over to the true owner as compensation for the tort which he has committed. See **AFRICAN PETROLEUM LTD V OWODUNNI (1991) 8 NWLR (PT 210) 391**. Mesne profit means intermediate profits, *id est* profits, accruing between two points of time that is between the date when the tenant ceases to hold the premises as a tenant and the date when he gives up possession.

See **ALHAJI AYMIKE V ALHAJI LAWAL (194) 7 NWLR PART (356) 253**”.

The Defendants tenancy expired on 30<sup>th</sup> November 2018. The Defendant held over the property from 1<sup>st</sup> December 2018.

As mesne profits are usually calculated on the yearly value of the premises which in this case is N10m per annum, I hold that the Claimant is entitled to mesne profits from 1<sup>st</sup> December 2018 to the date of judgment at a 34 monthly rate of N833,333.34.

The claim of N750,000 as professional fees is dismissed. There is no evidence to support this claim. The claim of 500,000 general damages is also dismissed the claim for mesne profit having been granted. However Claimant is entitled to costs of this action which I assess at N40,000.

I award 10% post judgment interest per annum of the judgment sum from today until the judgment sum is fully liquidated.

Hon. Judge