IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA ABUJA
ON 16TH MARCH, 2021

BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI
PRESIDING JUDGE

SUIT NO: FCT\HC\CV\1507\09

BETWEEN:
MR. D.O. OHANICH
(TRADING IN THE NAME AND STYLE OF D.O. OHANICH COMMERCIAL VENTURES) — **PLAINTIFF**

AND

1. **HONOURABLE MINISTER OF WORKS, HOUSING AND URBAN DEVELOPMENT**
2. **THE ATTORNEY GENERAL OF THE FEDERATION AND MINISTER OF JUSTICE**

— **DEFENDANTS**

SIR E.E. ONUOHA WITH W.S. BAKO ESQ FOR THE PLAINTIFF

CHRISTOPHER OSHOMEGIE ESQ WITH STELLAMARIS OBIORA ESQ AND DAMOLE BAMIDEL ESQ FOR THE 2ND DEFENDANT

JUDGMENT

By a further amended statement of claim filed on 16th March 2011, the Plaintiff claims from the Defendants:

> "(a) The sum of ₦9,965,300.00k (Nine Million, Nine Hundred (sic) Sixty (sic) Thousand, Three Hundred Naira) only been (sic) the outstanding balance of the cost of the renovations of the block of 7 Nos: room and parlour situate at off Jubilee Road, Krumi Sarki Suleja, Niger State and block of 10 nos: room and parlour situate at Madalla, Niger State,

21% interest from 2004 until judgment and 10% interest on the judgment sum until same is finally liquidated.

(b) The sum of ₦8,880,000.000 (Eight Million, Eight Hundred And Eighty Thousand Naira) only being the outstanding balance of the rent arrears of block of 10 nos. room and parlour situate at Madalla, Niger (sic) and 21% interest of the judgment sum, from 1997 until judgment and 10% interest on the judgment sum until same is finally liquidated.

(c) The cost of the suit.''

The 1st Defendant filed an amended statement of defence on 19th November 2012, deemed duly filed and served on 6th December 2012.

The 2nd Defendant filed a statement of defence on 25th February 2013, deemed duly filed and served on 9th May 2013.

The Plaintiff filed a reply to the 1st Defendant's amended statement of defence on 21st November 2013 whereby the Plaintiff reduced his claim on arrears of rent to ₦7,720,000; and a reply to the statement of defence of the 2nd Defendant on 21st November 2013.

The Plaintiff testified on oath as PW1 in proof of his case. He first adopted his witness statement on oath sworn on 31st January 2011. Therein he testified inter alia that he trades in the name and style of D.O. Ohanich Commercial Ventures and owns the properties known as block of 7 nos room and parlour situate at off Jubilee Road Krumi Sarki Suleja, Niger State, and block of 10 nos room and parlour situate at Madalla, Niger State.

That he let his said properties to the 1st Defendant vide tenancy agreements between himself and the 1st Defendant dated 1st January 1997 – Exhbits P1 and P1A respectively. That the 1st Defendant terminated the tenancies vide letter

dated 24th December 2003 – Exhibits P2 and P2A respectively with effect from 31st December 2003.

That one of the conditions of Exhibits P1 and P1A is that the 1st Defendant should keep the interior of the demised premises in good and tenantable state of repair and condition and deliver the premises in good and tenantable state of repair and condition.

That the Defendants delivered the possession of both demised premises in a state of disrepair and condition.

That he wrote several letters to the 1st Defendant to cause repairs and/or renovate both demised premises. See Exhibits P3 dated 26th October 2003, Exhibit P4 dated 3rd February 2004, and Exhibit P5 dated 13th April 2004.

In addition to the above, the Association Of Landlords Federal Ministry of Works and Housing, also wrote several letters to 1st Defendant on his behalf and on behalf of several of the 1st Defendant's landlords demanding that the 1st Defendant should renovate the various demised premises and pay the arrears of rent owed their members. See Exhibit P6 dated 24th January 2004 and Exhibit P7 dated 24th December 2004.

These notwithstanding, the Defendants deliberately refused and/or neglected to effect the requisite repairs and renovations on the demised premises.

Due to the urgent need to mitigate his damages and to enable him rent both premises, he repaired and renovated the premises in the respective sums of ₦4,575,900 and ₦5,516,300. Prior to the repairs and renovations, he had in Exhibit P5 forwarded the cost of the repairs and renovations to the 1st Defendant and demanded that the 1st Defendant inspect the two properties and commence renovations. The Defendants however neglected to inspect the properties to renovate them.

He tendered receipts and invoices Exhibits P8 To P41 for renovations and repairs done totalling ₦10,092,200 out of which the Defendants merely paid a token amount of ₦126,900 vide two oceanic bank cheques dated 29th December 2008 for ₦72,000 and ₦54,900 – Exhibit P42 and Exhibit P42A respectively, deliberately leaving the sum of ₦9,965,300 unpaid on the cost of renovations.

That the rent for the block of 10 nos room and parlour situate at Madalla, Niger State vide tenancy agreement was ₦1,200,000 per annum. That the 1st Defendant occupied the Madalla premises for 7 years covering the period 1997 to 2003 and only paid ₦720,000 as rent, out of ₦8,400,000 for the 7 years 1st Defendant occupied the premises.

That the Defendants remained in arrears of rent in the sum of ₦8,880,000 (later, reduced to ₦7,720,000). That the 1st Defendant ignored all the letters he wrote demanding payment. See Exhibits P43, P44 and P45 dated 12th January 1998, 13th June 2001 and 25th November 2002 respectively.

He further adopted his additional witness statement on oath of 16th March 2011 and tendered four more invoices for renovations – Exhibits P46, P47, P48 and P49.

Adopting his reply on oath to the 1st Defendant's statement of defence filed on 8th April 2011, he stated inter alia that the staff of the Defendants overstretched his properties hence the need to renovate became imperative.

That if renovations were not required, the 1st Defendant would never make part payments to him on the renovation claims, not being a charitable organisation.

That the Defendants deliberately neglected to give him the requisite agreed three months notice of termination of the tenancy agreement, not because of

the date of the Federal Government Monetization Policy Circular, but simply to frustrate the essence of the tenancy agreements.

That at all times to the formulation of the monetization policy, the 1st Defendant actively participated and knew of the timing of same. He denied the existence of the purported meeting of the committee on 24th September 2008, and assuming (though not conceding) that it existed, that the 1st Defendant's Committee neglected or/failed to make findings on the state of the properties at the time of the determination of the tenancy and could not conclude on the total amount the 1st Defendant owed them. More importantly, that 20% was never an issue at the meeting.

That he was not a party to the meeting of 11th December 2008 and never authorized anyone to accept on his behalf or conceded to the payment of 20% of annual rent as renovation fee in lieu of actual renovation of his properties. And no person accepted so, on his behalf.

That the letter purportedly signed by Chief Okey Nwafor, Mr. Louis I. Okoroma and Mrs. Ann Nwankor does not represent his interests in any capacity as they never had his mandate.

He never delegated them or any other person to represent him in such meeting, neither did any of them, including the Defendants intimate him they entered such an agreement on his behalf.

That he collected the sum of ₦72,000 and ₦54,900 as part payment of the total cost of renovation, not for any reason as 20% of annual rent as renovation fee in lieu of actual renovation of his properties.

That the value of work done on the properties is worth more than ₦72,000 and ₦54,900 and he could not have accepted the said amount as final payment for renovation.

That he was not paid his rents despite his demands for same prior to and after the determination of the tenancy.

That the 1st Defendant made no attempt to renovate the properties and till date has not evaluated the cost. And the 1st Defendant even upon becoming aware of the cost of renovation served on them, did not at any time take exception to the cost. He urged that his claims be granted.

In cross examination, he stated inter alia that he was not paid ₦2,400,000 for the Madalla property as stated in Exhibit P1A insisting he was paid only ₦720,000 and nothing more.
He denied ever signing an agreement reducing the rental value of the Madalla property from ₦1,200,000 per annum to ₦400,000 per annum.
Thus the Plaintiff closed his case.

On 21st March 2017, DW1 Irmiya Arigu Emmanuel, Principal Administrative Officer testified on affirmation as the sole witness for the 1st Defendant. He adopted his amended statement on oath of 19th November 2012 wherein he stated inter alia that he is a staff of the Welfare Unit of the 1st Defendant and the Assistant Secretary of the committee on the verification and payment of rents with the former landlords of the 1st Defendant, set up to settle disputes between the 1st Defendant and its former landlords.

That the 1st Defendant occupied the Plaintiff's properties prior to the Monetization Policy of The Federal Government and the Plaintiff was paid ₦490,000 for 2 years for the 7 rooms and ₦2,400,000 for the 10 rooms as evidenced in Plaintiff's Exhibit P1 and P1A from January 1997 to December 1998.

In 1999, the 1st Defendant set up a committee to review the rents of houses occupied by its staff some of which were deemed unrealistic. Upon inspection of the houses, the Plaintiff's 7 rooms house at Suleja was reviewed upward to ₦318,000 per annum and the 10 rooms were reviewed downward from ₦1,200,000 to ₦400,000 per annum. See Exhibit D1 and D2 and the Plaintiff was paid ₦636,000 for 7 rooms from 1st November 2000 to 31st October 2002 and ₦800,000 for 10 rooms from 1st May 2001 to 30th April 2003.

That on 11th July 2001 the Plaintiff was paid ₦1,292,400 in two cheques of ₦572,400 and ₦720,000 see Exhibit D6.

That the Plaintiff was further paid ₦305,000 covering 1st November 2002 to 31st December 2003 in respect of the 7 rooms.

That the Plaintiff did not complain about the upward review of the 7 rooms at Suleja but only chose to complain of the downward review of the 10 rooms at Madalla.

That the tenancy agreements obligated the 1st Defendant to keep the interior of the premises in good and tenantable state of repairs and to deliver up possession in the same state of good repair and condition. That the 1st Defendant did not leave the Plaintiff's properties in an untenantable condition. That the tenancy was terminated due to the Federal Government Monetization Policy vide a letter dated 24th December 2003.

That a committee set up by the 1st Defendant to discuss its former landlords met on 24th September 2008 with all the former landlords in attendance including the Plaintiff. See Exhibit D9.

That another meeting was held on 11th December 2008 between the said committee and the landlords, where the committee made an offer of 20% of each landlord's annual rent as renovation fee in lieu of actual renovation of the

houses by the 1st Defendant. That the landlords accepted the offer through their representatives Chief Okey Nwafor, Mr Louis I. Okoroma and Mrs. Ann Nwankor via letter dated 11th December 2008 – Exhibit D3. See also Exhibit P6 and P7 on other letters from representatives of Landlords Association before the 20% agreement.

That the Plaintiff therefore collected 2 cheques of ₦54,700 and ₦72,000 respectively being 20% of the annual rent of his 2 properties in lieu of renovations:

(a) ₦54,700 being 20% of ₦318,000 for 7 rooms less VAT and

(b) ₦72,000 being 20% of ₦400,000 less VAT for the 10 rooms

negotiated by their landlords representatives with his consent. See Exhibit D4 dated 26th January 2009.

That the 1st Defendant having paid all its rents does not owe the Plaintiff any arrears of rent. See Exhibits D5, D6, D7 and D8.

In cross examination he stated inter alia that he was not part of the inspection team in 2008 and had no feedback on the inspection.

He did not know the purpose of the inspection, nor the level of dilapidation of the properties.

That the outcome as reported by the Inspection Committee was the payment of 20% to each landlord as renovation costs as the figures brought up by the landlords, including the Plaintiff, were unrealistic.

That the agreement with all the landlords to pick their representatives was oral. He said the minutes of meeting, Exhibit D9, captured the 20% agreement and the Plaintiff's representatives wrote Exhibits D3 on acceptance of the 20% in settlement for renovation. There is no cost estimate by the 1st Defendant for renovation of the Plaintiff's property but that the 1st Defendant was interested

in the renovation and agreed with the landlords on a percentage as costs for renovation.

DW1 was discharged.

The 2nd Defendant did not lead any evidence following adjournments granted him. The court consequently ordered his case closed on 8th October 2019 and adjourned for adoption of final written addresses.

The 1st Defendant did not file a final written address.

Mr. Bako for the Plaintiff adopted the final written address filed on 24th January 2020 by Sir E.E. Onuoha which was deemed duly filed and served on 29th September 2020.

Mr. Oshomegie for the 2nd Defendant adopted his final written address of 8th December 2020 deemed duly filed and served on 16th December 2020.

In the Plaintiff's final written address a sole issue for determination was raised thus:

> ''Whether the Plaintiff has proved his case on the preponderance of evidence or on the balance of probability as required in civil cases and therefore entitled to the reliefs sought in this suit.''

ON RELIEF A

Learned counsel answered in the affirmative.

He submitted that the 1st Defendant failed to abide by the terms of Exhibits P1 and P1A on keeping the interior of the demised premises in tenantable repair and condition, and having failed to repair and renovate the properties as demanded by the Plaintiff the Plaintiff was compelled to undertake the repairs and renovation himself. The Plaintiff was thus entitled to ₦9,965,300 as claimed.

He urged that the Defendants failed to prove that the Plaintiff accepted 20% of the annual rent of both properties as full and final settlement of the cost of repairs and renovation as Exhibit D3 is a mere letter signed by 3 signatories without proof they had the mandate of the Plaintiff.

Reliance was placed on exhibits tendered and case law, including **LARMIE V DATA PROCESSING MAINTENANCE & SERVICES LTD (2005) LPELR-1756 (SC) 1; KOIKI V MAGNUSSON (1999) 8 NWLR (PT 618) 492 AT 514; SPDC LTD V NWAKA (2003) 6 NWLR (PT 815) 184 AT 208 PARAGRAPH D-E**.

ON RELIEF B

It was submitted that the Plaintiff is entitled to arrears of rent of ₦7,720,000 the 1st Defendant having breached its contractual obligation to pay its rent as agreed in the tenancy agreement on the Plaintiff's property.

ON RELIEF C.

It was submitted that the Plaintiff commenced this suit by a writ dated 9th May 2009 and this suit has spanned 12 years with lots of costs incurred by the Plaintiff by way of filing fees, appearance fees, and payment on account which learned counsel put at ₦6 million. In line with Order 56 Rule 6 Rules of this court he urged the court to award costs in favour of the Plaintiff.

Mr. Oshomegie for the 2nd Defendant raised two issues in his final written address as follows:-

> "(1) Whether having regards to the fact of this suit – pleadings and evidence adduced by the Claimant is there a cause of action shown against the 2nd Defendant.
>
> (2) Whether the 2nd Defendant is a necessary party to this suit before this Honourable Court?"

Learned counsel answered both issues in the negative.

He submitted that no cause of action was disclosed against the 2nd Defendant neither was any wrongdoing complained of against him nor any consequence suffered by the Claimant as a result of an act or omission of the 2nd Defendant whatsoever. **ADEKUYA V FEDERAL HOUSING AUTHORITY (2008) 11 NWLR (PT 1099) 539 AT 551 PARAGRAPH D-F; EGBE V ADEFARASIN (1987) 1 NWLR (PT 471) 1 AT 20** were relied upon among others.

It was therefore submitted that the 2nd Defendant is not a necessary party in this suit and his absence will not affect the determination of this suit as the matter can properly, completely, effectively and finally be determined without joining him. **GREEN V GREEN (1987) 3 NWLR (PT 61) 480** was relied upon. The court was urged to strike out the name of 2nd Defendant.

Mr. Bako for the Plaintiff responded that the 2nd Defendant was properly joined as Attorney General of the Federation is a necessary party in all suits involving the Federal Government. Secondly that by the provisions of the Sheriff and Civil Process Act, the consent of the Attorney General of the Federation is necessary to execute judgment against the Federal Government.

Mr. Oshomegie responded by letter that the Supreme Court in **ATTORNEY GENERAL OF KANO STATE V ATTORNEY GENERAL OF THE FEDERATION (2007) ALL FWLR (PT 364) Pg 238 AT 245 RATIO 7** made it clear that Attorney General can only be properly sued as a Defendant when the complaint is directly against the state or Federal Government concerned.

He submitted that the joinder of the Attorney General solely for the purpose of obtaining his consent under Section 84 Sheriff and Civil Process Act for enforcement of judgment is unnecessary as the application for consent is

distinct from the suit which outcome warranted the application. He urged that the Plaintiff would only be pre-empting the court (which the court would frown at) implying that judgment would be entered in his favour.
He urged the suit against 2nd Defendant be dismissed.

I have considered the evidence vis-a-viz submissions of learned counsel before me.

Let me first briefly address the issues raised by the 2nd Defendant whether the Plaintiff has any cause of action against the 2nd Defendant and whether the 2nd Defendant is a necessary party. I answer both issues in the affirmative. I agree with the Plaintiff that the 2nd Defendant as the Chief Law Officer of the Federation is a necessary party in all civil litigations involving the Federal Government or its agencies.

In **ATTORNEY GENERAL KANO STATE V ATTORNEY GENERAL FEDERATION (2007) LPELR-618 (SC)** relied upon by Mr. Oshomegie, the issue before the Supreme Court was whether the original jurisdiction of the Supreme Court was properly invoked, having regard to the nature of the dispute.
The dictum of Kalgo JSC relied upon by Mr. Oshomegie was a concurring judgment which I think most respectfully, can be distinguished from the instant case because the Attorney General of the Federation has sufficient interest in any claim against the 1st Defendant as an agency of the Federal Government.
A situation which is nearly on all fours with the instant case is that of **REGISTERED TRUSTEES OF NATIONAL ASSOCIATION OF PROPRIETORS OF PRIVATE SCHOOLS V ATTORNEY GENERAL AND COMMISSIONER FOR JUSTICE, RIVERS STATE (2018) LPELR-45952 (CA).**

In that case, the originating summons was commenced by the Appellants against the Attorney General of Rivers State, although the complaints in the suit were against the activities of the Board of Internal Revenue, Rivers State.
The Court held that legislation and case law abound that entrenched that the Attorney General as the Chief Law Officer of the state is vested with the constitutional responsibility for initiating and defending actions on behalf of the State. **ATTORNEY GENERAL, KANO STATE V ATTORNEY GENERAL FEDERATION (2007) 6 NWLR PT 1029 PAGE 164; EZOMO V ATTORNEY GENERAL, BENDEL (1986) I NWLR (PT 36) PAGE 448** were referred to.

The Court at page 19 per Theresa Ngolika Orji-Abadua JCA averred thus:-

> "I must state that even though the Attorney General of the State can be sued on behalf of the State, where the complaints in the suit are not directly against the Rivers State Government but against the agency that can be sued on its own, the matter will be better pursued against the agency but that does not render the suit incompetent. It borders on the issue of non-joinder of parties which cannot, on its own, affect the competency of the suit nor warrant the suit be struck out."
> (Emphasis mine)

In my respectful view, the Attorney General of the Federation has sufficient interest in this case to have been made a party. If nothing else he is a nominal party whose joinder is necessary so he is bound by the decision of the court. In any event if the Plaintiff is successful, execution of judgment against the 1st Defendant would require the consent of the Attorney General of the Federation. See Sheriff and Civil Process Act. Meaning that he has an interest in the suit. I therefore hold that the joinder of the 2nd Defendant is proper.

I shall now address the issue as raised by the Plaintiff:

(1) Whether the Plaintiff has proved his case on a preponderance of evidence to entitle him to the reliefs sought.

ON RELIEF A

The Plaintiff claims the sum of ₦9,965,300 as outstanding balance of the cost of renovations of block of 7 nos room and parlour situate at off Jubilee Road Krumi Sarki Suleja Niger State and a block of 10 nos room and parlour situate at Madalla, Niger State.

21% interest of the said sum from 2004 until judgment and 10% interest on the judgment sum until same is finally liquidated.

The basis of the Plaintiff's claim in relief (A) is the tenancy agreements Exhibits P1 and P1A, wherein it was stipulated under the tenant's agreement in paragraph 4 and 5 as follows:

> "4. To keep the interior of the premises in good and tenantable state of repair and conditions as they are now fair wear and tear excepted.
>
> 5. On the determination of the tenancy to quietly deliver up the possession of the premises to the landlord or his agent in such good repair and condition as aforesaid."

The same conditions are equally stipulated in Exhibits D1 and D2 tendered by the 1st Defendant. The 1st Defendant determined the tenancy from 31st December 2003 by letter Exhibit P2 and P2A dated 24th December 2003.

It was the testimony of PW1 that the 1st Defendant's staff moved out from his properties leaving them in a state of disrepair and untenable condition due to misuse by the staff of the 1st Defendant. His entreaties to the 1st Defendant vide his letters Exhibits P3, P4 and P5 to inspect and renovate the two

properties went unheeded by the 1st Defendant, including Exhibit P5 dated 13th April 2004 which contained the estimated cost of ₦4,575,900 and ₦5,516,300 prepared by his quantity surveyor and attached. See also Exhibit P6.

Failure to reply to a business letter is deemed to be acceptance of its contents.

The Defendant's disregard for the Plaintiff's demands left the Plaintiff with no choice than to mitigate his damages by embarking on the repairs himself.
The Plaintiff tendered Exhibits P8 to P41 and P46 to P49 – receipts and invoices to prove the expenditure on his two properties.

The receipts/invoices for the expenditures on the Suleja house amounts to ₦4,575,900 and the receipts/invoices for expenditure on the Madalla property amounts to ₦5,515,680. This giving a total expenditure of ₦10,091,580. Exhibit P46 for ₦192,000 was a repetition of Exhibit P17, I therefore did not add it to the Suleja expenditure.

The law is trite that he who asserts must prove.

The receipts/invoices of the Plaintiff prove his expenditure on renovation/repairs on the two properties.

DW1 testified that they did not inspect the properties until 2008, five good years after the staff of the 1st Defendant vacated the premises. There is therefore no evidence from the Defendants to counter the Plaintiff's evidence that the properties were overstretched by the 1st Defendant and were in such a state of disrepair for which they required extensive renovations as the Plaintiff carried out.

The 1st Defendant was at liberty to carry its independent assessment or evaluation of the properties in December 2003 or January 2004 after its staff vacated and commence renovation but chose not to.

It was too late for them in 2009 to declare that the Plaintiff's cost of renovation was unrealistic.

I am satisfied that the Plaintiff has proved by cogent and admissible evidence that the 1st Defendant left his Madalla and Suleja properties in a state of disrepair in breach of their tenancy agreements – Exhibits P1 and P1A and D1 and D2.

The Plaintiff is therefore entitled to the sum of ₦4,575,900 cost of renovation of his Suleja property plus ₦5,515,680 cost of renovation of his Madalla property – totally ₦10,091,580 against the Defendants.

Out of this sum proved, it is however evidence of the Plaintiff that the 1st Defendant only paid ₦126,900 comprising ₦72,000 and ₦54,900. Thus the Defendant left a balance of ₦10,091,500 – ₦126,900 = ₦9,964,680.
The Plaintiff is entitled to this sum.

Before I conclude on relief A, let me address Exhibit D3 dated 11th December 2008 tendered by the 1st Defendant, by which the DW1 testified that the Plaintiff accepted 20% of annual rent through the landlord's representatives in lieu of renovation. The Plaintiff disputed this in his testimony before the court. There is nothing to indicate to the court that the signatories in Exhibit D3 acted on behalf of the Plaintiff or had his authority to so act.

The Plaintiff in cross examination stated he was not aware of the agreement of the 20% nor consented to it. The onus is therefore on the Defendants to prove that the Plaintiff was aware. None of the signatories of Exhibit D3 testified in court. The minutes of the meeting of 11th December 2008 where the said agreement was reached was not tendered and no reason given. Why? The law presumes that evidence which could be and is not produced would be

unfavourable to the person who withholds it. Section 167(d) Evidence Act 2011.

Exhbit D9 the minutes of the meeting of 24th September 2008 attended by the Defendant did not reveal such an agreement. The said Exhibit D9 is also unsigned and so carries no weight. The 1st Defendant did not tender the minutes of 11th December 2008 because it would have been unfavourable to it. The agreement that the 1st Defendant was to put the properties in tenantable repairs upon vacation of same being in writing, any agreement to vary same ought also to be in writing.

See **CBN V IGWILLO (2007) LPELR-835 (SC) AT 39-40 (PARAGRAPHS B-B); ORAKWE V ORAKWE & ORS (2018) LPELR-44763 (CA) PAGE 22 PARAGRAPHS E-F.**

The Plaintiff is therefore right that he only collected the ₦126,900 as part payment of the cost of renovation. The Defendants therefore owe him ₦9,964,680 as balance of cost of renovation.

Pre-judgment interest must have been in contemplation of parties. See **ATTORNEY GENERAL, GOMBE STATE V GADZAMA (2014) LPELR-23423 (CA); A. G. FERRERO CO. LTD V HENKEL CHEMICALS NIG LTD 2011 ALL FWLR PT 587 PG 647.**

The Plaintiff claims 21% pre judgment interest from 2004. There is no evidence led in proof of this interest whatsoever. The claim for 21% pre-judgment interest is therefore dismissed.

Pursuant to Order 39 Rule 4 of the Rules of this court I award 10% per annum post judgment interest on the sum of ₦9,964,680 from today till the judgment sum is fully liquidated.

RELIEF B

On arrears of rent of ₦7,720,000, it is the Plaintiff's testimony that the annual rent for the 10 units of room and parlour at Madalla is ₦1,200,000 per annum. See Exhibit A and that for the 7 years the 1st Defendant's staff occupied his property that the 1st Defendant only paid ₦720,000 via Exhibit P6 out of ₦8,400,000 accumulated rent. See Exhibits P43, P44 and P45. The Defendant on the other hand testified that the rent for the Madalla property was reviewed downwards from ₦1,200,00 per annum to ₦400,000 via Exhibit D2, tendered and admitted without objection from the Plaintiff's counsel.

The Plaintiff signed Exhibit D2 in the presence of his witness Wilfred Okafor. Plaintiff is literate. It is presumed he read Exhibit D2 before signing it. The law is trite that parties are bound by their agreement freely entered into. See **BEAUMORT RESOURCES LTD & ANOR V DWC DRILLING (2017) LPELR 42814 (CA)**.

It is therefore futile for him to deny in court that he was not aware that the rent of his Madalla property was reviewed downward in Exhibit D2 from 1st May 2001 to 30th April 2003, a term of 2 years at annual rent of ₦400,000 being ₦800,000 for 2 years. The receipt of which sum he acknowledged on Exhibit D2. 8 months later, the 1st Defendant's staff vacated the property on 31st December 2003.

Therefore from 1st May 2001 to 31st December 2003, the annual rent of the Madalla property stood at ₦400,000 per annum.

Again the Plaintiff tendered Exhibit P1A signed by him, by which he acknowledged receipt of ₦2,400,000 for the initial rent of the 10 nos room and parlour at Madalla for the period 1st January 1999 to 31st December 1998.

The Plaintiff cannot thereafter deny that he received ₦2,400,000 rent aforesaid.

However, I agree with the Plaintiff that there is no evidence that the 1st Defendant paid rent for the period 1st January 1999 to 30th April 2001 a period of 2 years and 4 months: ₦2,400,000 + ₦400,000 = ₦2,800,000.

From 1st May 2001 the rent was reviewed downwards to ₦400,000 per annum and the 1st Defendant paid for 1st May 2001 to 30th April 2003 (2 years) leaving the period 1st May 2003 to 31st December 2003 unpaid (8 months) = ₦400,000 ÷ 12 months = ₦33,333.33 x 8 months = ₦266,666.66.

Total rent unpaid therefore equal ₦2,800,000 + ₦266,666.66 = ₦3,066,666.66.

ON 21% PRE-JUDGMENT INTEREST

No evidence was led in proof of this interest claimed. I dismiss the claim for prejudgment interest.

Pursuant to Order 39 Rule 4 Rules of this court. I award 10% post judgment interest per annum on the sum of ₦3,066,666.666 from today until judgment sum is fully liquidated.

Costs: No evidence led for the ₦6 million costs which counsel raised in his final address.

However a successful party is entitled to normal costs of action. The delay in this matter was partly the fault of Plaintiff's counsel who took 4 years to conclude his case. I award cost of ₦100,000 in favour of Plaintiff against the Defendants.

The sole issue raised by the Plaintiff is answered in the affirmative in part in favour of the Plaintiff.

Judgment is entered in favour of the Plaintiff against the Defendants as stated above.

Hon. Judge