

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE. H. MU'AZU
SUIT NO: FCT/HC/CV/2473/2020
DELIVERED ON THE 11/07/2024**

BETWEEN:

EVADOR NIGERIA LIMITED-----CLAIMANT

AND

"A" GROUP PROPERTIES LIMITED-----DEFENDANT

JUDGMENT

The claimant by statement of claims and writ of summons dated the 25th August, 2020 along with an application for summary Judgment prays the court for the following reliefs against the defendant to wit;

- a. The sum of **₦36,000,000** (Thirty Six Million Naira) being the arrears of rent for the period of 5th June, 2016 to 4th of June, 2019.*
- b. The sum of **₦5,000,000** (Five Million Naira) being the arrears of rent for the period of 4th of June, 2019 to 6th of November, 2019 when the Defendant left the property.*

- c. The sum of **₦6,000,000** (Six Million Naira) being the arrears of service charge which have remained unpaid for the period of 5th of June, 2016 to 4th of June, 2019.*
- d. The sum of **₦833,335.00** (Eight Hundred and Thirty Three Thousand, Three Hundred and Thirty Five Naira) being the arrears on service charge which have remained unpaid for the period of 4th of June, 2019 to 6th of November, 2019 when the Defendant left the property.*
- e. Pre-Judgment interest on the judgment sum of **₦47,833,335.00** (Forty Seven Million, Eight Hundred and Thirty Three Thousand, Three Hundred and thirty Five Naira) at the rate of **24%** commencing from 5th day of June, 2016.*
- f. Post-Judgment interest on the judgment sum of **₦47,833,335.00** (Forty Seven Million, Eight Hundred and Thirty Three Thousand, Three Hundred and Thirty Five Naira) at the rate of **25%** till the whole sum is liquidated.*
- g. The sum of **₦10,000,000.00** (Ten Million Naira) as cost of action.*
- h. The sum **₦20,000,000.00** (Twenty Million Naira) as general damages.*

In response, the defendant filed its statement of defence dated the 26th October, 2020. The claimant's application for summary judgment was heard and determined wherein this Honourable court entered judgment in favour of the claimant with respect to reliefs A, C, F, H and ordered that the claimant should lead evidence to proof reliefs B, D, E and G.

The claimant at trial of the substantive suit called a sole witness and tendered three (3) documents to wit;

- (1) Affidavit to show cause.
- (2) Copy of a writ of summon in Suit No. **CR/2804/2010**
- (3) Copy of receipt of payment of lawyers professional fee of **₦10,000.00** (Ten Thousand Naira).

The case of the claimant as testified by PW1 is as thus;

It is the case of the claimant that the Defendant, a limited liability company was a tenant at No. 2A (Wing A) Osun Close, Off Osun Crescent, Maitama, Abuja (the subject matter herein) belonging to the claimant. The claimant acquired the said property on the 3rd day of November, 2014 vide a Power of Attorney and Deed of Assignment from one Dr. (Mrs.) Chinwe Igwilo. Prior to the said purchase, the Defendant was a tenant paying the annual rent of the sum of **₦12,000,000.00** (Twelve Million Naira) and N2,000,000 (Two Million Naira) as service charge annually. The claimant also averred that in view of the said transfer of title over the property to it, the Defendant was formally informed of the change of ownership by a letter dated the 6th day of

November, 2014. The rent over the said property for the period of 5th day of June, 2015 to the 4th day of June, 2016 was received by the claimant through her predecessor in title **Dr. (Mrs.) Chinwe Igwilo**. Some months before the expiration of the tenancy agreement, a demand letter dated the 3rd day of March, 2016 demanding for payment of rent and service charge for the period of the 5th day of June, 2016 to the 4th day of June, 2017 was served on the Defendant. Subsequently, several other letters were written demanding for the payment of rent from the years 2016 to 2019 but the Defendant reluctantly failed to pay. In 2019, the Defendant left the property without giving notice to the Claimant or offsetting the rent arrears and service charge owned to the plaintiff by the Defendant. The summation of rent owned the Plaintiff by the Defendant is being arrears of 5th June, 2016 to 4th June, 2019 and a pro-rata sum of being arrears for the period of 4th June, 2019 to 6th November, 2019 when the Defendant clandestinely left the said Plaintiffs property without notice to the claimant.

The Defendant in defence of this suit called a sole witness, (Bashir Adewunmi) who adopted his deposition and stated that the Defendant is not aware of Dr. (Mrs.) Chinwe Ogwilo being the owner of the property and maintain that they are not aware of any authority given to Mr. Akubundu Igwilo to deal on the property.

That the Claimant is not a party to the tenancy agreement Defendant had over the property and are not aware of the

sale of the property and never received any letter from the claimant.

It is further the Defence of the Defendant that it does not know the claimant as a Landlord to the property and had any contractual agreement with the claimant to pay it annual rent of **₦12,000,000.00** and service charge of **₦2,000,000.00**.

The Defendant stated that it is not indebted to the claimant for the sum of **₦6,000,000.00** as arrear on service charge and that the claimant filed a similar suit in Suit No. **CV/2804/2018** against the Defendant and the matter was transferred to the general cause list and up to date, the claimant does not comply with the order of Court for it to file its statement of claims.

DW1 was cross examined and discharged.

The suit was adjourned for filing and adoption of final written addresses.

Learned counsel for the Defendant in their final written address formulated only one issue for determination to wit;

Whether the plaintiff has been able to establish by way of credible evidence that they are entitled to claims against the defendant the relief sought in this case to warrant this court entering Judgment in its favour.

Learned counsel for the defendant then argued the above issues succinctly in urging the court to dismiss this case in the interest of Justice.

On its part, Learned Counsel for the claimant formulated the issue, to wit:

whether having regards to the facts and circumstances of the case, the claimant has been able to prove its case by way of credible evidence to be entitled to grant of reliefs B, D, E and G sought in the case against the Defendant.

The Learned Counsel argued the above issue citing relevant cases in urging the court to grant the reliefs sought in the interest of Justice.

I have gone through the case of the Claimant as aptly presented by the claimant's sole witness and that of the Defendant as presented by DW1. I shall be brief, but succinct in addressing the issue at stake, in the interest of Justice, and fair play.

The law is settled that in civil matters, the burden of proof is on the party who asserts and hence, he has the burden to lead credible evidence in proof of his claims on the preponderance of evidence to be entitled to the Judgment.

Section 131 (1) and (2) of the Evidence Act, 2011 is very instructive here.

In this case, the claimant asserted the positive when it stated in the statement of claim that he purchased the property known and situated at No 2A (Wing A) Osun close, off Osun Crescent Maitama, Abuja, on the 3rd day of November, 2014 from Dr. (Mrs.) Chenwe Igwilo, who was the owner of the said property. In their statement of the claims before the court particular in paragraph 5, the Claimant pleaded the Deed of Assignment, Power of Attorney evidencing the transaction. The claimant equally pleaded letter demanding rent and service charge in their Statement of claims.

However, during trial PW1 tendered the following documents in evidence to wit;

- a) Affidavit to show cause.
- b) Writ of summons
- c) Receipt of payment of legal fee which were admitted in evidence.

In his written address, Learned counsel for the Defendant argued that the document tendered by the Claimant which was admitted by the Honourable Court were wrongly admitted as same were not pleaded. Counsel cited ***AMCON VS MILTON (NIG) LIMITED & ORS (2023) LPELR 60550 (CA)*** to support his assertion.

Counsel further stated that these documents were mere photocopies without certification and therefore should expunge same. See the ***Case of TORIOLA & ANOR VS EWENLA (2015) LPELR 28534 (CA)***.

It is trite that there are three main criteria governing admissibility of document in evidence, namely:-

- (a) Is the document pleaded.
- (b) Is it relevant to the inquiry being tried by the court.
- (c) Is it admissible in law. ***OKONJI VS NJ OKANMA (1999) LPLER 2477 (SC).***

I have seen **Exhibit P1** and **P2** in evidence. The two documents are primary evidence of public documents whereas **Exhibit P3** is a private document.

Indeed, Section 86(2) of the Evidence Act provided thus:

“Where a document has been executed in several parts, each part shall be primary evidence of the document”.

I have seen exhibits tendered in evidence by the Claimant. It is not in doubt that **Exhibit P1** and **P2** are primary evidence of public document and need no certification to be admitted in evidence. Supreme Court faced with a similar situation in case of Kassim vs State (2017) LPELR 42586 (SC) states as thus;

*Is with regard to the admissibility of **Exhibit 1, 2 and 3** and the contention of learned counsel for the appellant that only certified true copies of public documents are admissible in evidence and therefore the original document tendered in this case are inadmissible. I have adopt as mine*

*the exhaustive analysis of the relevant provision of the Evidence Act, 2011 carried out by my Learned Brother, Ejembi Eko JSC in the lead Judgment. In addition. I referred to similar exercise carried out by me in the recent case of Uwua Odo vs State (2016) 2-3 SC (Pt 111) 29 at 47-54 wherein I heard that a public document tendered in its original form is admissible in evidence by virtue of section 85 and 76. (1) of the Evidence Act 2011. I therefore hold that **Exhibit 1, 2 and 3** were properly admitted in evidence in this case.*

Tapping from the wisdom of my senior brother I shall also refuse the argument of Learned counsel for the Defendant asking me to expunge **Exhibit P1 P2 and P3** in evidence

Having resolved the issue of documents in evidence I shall beam my searchlight to ascertain whether the Claimant have proof it case as required by laws.

It is instructive to observe here again that this case was initiated under the summary Judgment and this court after considered the case of the parties have delivered it Ruling/Judgment on the 21st June, 2022 granting Reliefs A, C, F & H. In the court Judgment the court held that

“I am satisfied that by **Exhibit A, B, C, D, E, F, G** attached to the plaintiff’s affidavit in support and reply affidavit that

the property is owned by the plaintiff and that the plaintiff is entitled to the rent and service since 5th June, 2016.”

The Court further held that “**Exhibit 1** is a conclusive proof that by paragraph 6 of the Defendant affidavit to show cause, the Defendant was still in occupation of the Property as at 12th December, 2018 when **Exhibit 1** was filed as against June, 2018 claimed in paragraph 18 of counter affidavit. That year tenancy ended on the 4th of June 2019. Here is however, no conclusive evidence that the defendant stayed beyond 4th June, 2019”

The argument of Learned counsel of the Defendant that, the Claimant did not tendered the Tenancy Agreement, Power of Attorney is of No moment as this Honourable Court has already considered and delivered Judgment on same.

PW1 stated in paragraph 17 of his witness statement on oath that the Defendant has been on the property all along but only vacated the said property in November, 2019 without notifying the claimant or offsetting its rent arrears and service charge owed the claimant.

This assertion has to do with relief B sought by the claimant which borders on arrears of rent for the period of 4th of June, 2019 to 6th November, 2019.

Whereas in their defence, DW1 in paragraph 14 of his deposition asserted that it vacated the property in June, 2018. This piece of evidence was never controverted by the

Claimant under cross examination. Consequently the courts must act on same.

Having held that, there is no enough evidence to proof that the defendant was in occupation of the subject matter from the 4th of June, 2019 to 6th November, 2019, automatically relief D which has to do with arrears on service charge will suffer same faith.

On relief E which has to do with pre-Judgment interest on the Judgment sum. These again is not within the ambit of the Honorable Court to grant same as there is no basis either in the tenancy agreement or oral agreement of the parties, same is hereby refuse.

On the cost of action, I hereby award the sum of **₦5,000,000.00** (5 Million Naira) in favor of the Claimant as cost of this action.

An award of **₦10,000,000.00** (Ten Million Naira) in General damages hereby granted.

I make no further Orders.

SIGNED:
HON. JUDGE
11/07/2023.

Appearance:

Ifeanyi Ezeuko, Esq, for the Claimant

Claimant is represented in Court