IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT GARKI

CLERK: CHARITY ONUZULIKE
COURT NO. 10

SUIT NO: FCT/HC/CV/250/2014
DATE: 14/5/2024

BETWEEN:

HAJIYA SAFIYA BELLO……CLAIMANT

AND

STAN RERRI……DEFENDANT

JUDGMENT
(DELIVERED BY HON. JUSTICE S. B. BELGORE)

The Claimant by an Amended Statement of claims, seeks the following reliefs:

(1) The sum of **N72,000,000.00** (Seventy Two Million Naira only) being the total of four years rent owed by the Defendant at the rate of **N18,000,000.00** (Eighteen Million Naira only) per annum from 1st December, 2013 to 30th November 2017.

(2) An Order for immediate payment of the sum of **N1,500,000** (One Million, Five Hundred Thousand Naira only) per month as *mesne* profit from the 1st day of December, 2013 till actual and complete possession of the demised premises is delivered by the Defendant.

(3) The sum of **N20,000,000.00** (Twenty Million Naira only) as general damages

(4) The cost of filing this suit

The Defendant also on 23/3/18 filed an amended statement of defence and counter claims, claiming as follows:

(1) A set off in respect of the sum of N3m paid by the Defendant to the Plaintiff via a Diamond Bank Cheque dated 01/7/2013, which was consideration for the Plaintiff agreeing to a ten year extension which the Plaintiff later breached.

(2) A declaration that the Plaintiff's use of government agencies to frustrate, intimidate and finally force the Defendant out and shut down his business outlet at No. 6 Asa Street, Maitama, Abuja was unlawful.

(3) An order of Court appointing an Independent Auditor or relevant professional to determine the amount to be paid as rent by the Defendant for 1st December 2013 to March 2017 in view of the losses the Defendant and his business suffered due to the Plaintiff's act of unduly interrupting the Defendant's business.

In proof of their case, Claimant call one witness while Defendant also called one witness.

The following documents were tendered by the Plaintiff and admitted in evidence:

i. Lease Agreement between Hajiya Safiya I. Bello and Stan Rerri dated 1st December, 2008 as Exhibit "A"
ii. Letter dated 16th September, 2013 with the caption Re-termination of lease Agreement as Exhibit "B"
iii. The letter dated 27th September, 2013 as Exhibit "C"
iv. The letter dated 30th September, 2013 as Exhibit "D"

v. 7 days Notice of Owners intention to recover possession as Exhibit "E"

The Defendant also tendered Exhibit A – G.

At trial, PW1 gave testimony by herself. She lives in 200 Road Kano, she is a full housewife. She adopted her earlier filed Statement on Oath dated 15/3/2018 and she adopted the said statement on oath as her evidence in this case. Five (5) Exhibits were admitted through her.

DW1 is the Defendant who lives at No. 7, Musa Chaury Asokoro, Abuja. He too referred to his earlier filed Statement on Oath and adopted same as his evidence in this case.

At the close of trial, Counsel for both parties filed written addresses. Plaintiff Counsel's address is dated and filed on 4/10/2021. He also filed a reply to the Defendant's final address. It is dated 8/11/2021. The Defendant's Counsel also filed a written address dated 16/8/2021 and filed on 18/8/2021.

Learned Counsel to the Claimant submitted one issue for determination, to wit:

> ***"Whether having regard to the pleadings and evidence in the case, the Claimant has discharged the burden of proof on it to be entitled to the reliefs sought in this suit."***

The Defendant's Counsel on the other hand submitted five (5) issues for determination to wit:

> ***"1. Whether the Claimant is entitled to her claim for the sum of N72,000,000 (Seventy Two Million Naira) allegedly being the total of four years rent owed by the Defendant at the***

rate of N18,000,000 per annum from 1st December 2013 to 30th November, 2017.

2. Whether the Claimant is entitled to her claim for the sum of N1,500,000 (One Million, Five Hundred Thousand Naira) per month as mesne profit from the 1st day of December 2013 till actual and complete possession of the demised premises is delivered by the Defendant.

3. Whether a Claimant can legally and validly claim both arrears of rent and mesne profit over the same period of time?

4. Whether the Claimant is entitled to her claims for damages and cost of the action.

5. Whether the Defendant is entitled to the reliefs in his Counter-Claim."

What are the contentions of both parties? According to the Claimant, the Claimant is the owner of the property known as No. 6 Asa Street Maitama District, Abuja which was leased to the Defendant on the 1st day of December 2008. The initial rent was for N10,000,000 (Ten Million Naira only) per annum commencing from the 1st day of December, 2008 for initial period of three years, this was evidenced by a lease agreement which provided that the first three years of the lease is N10,000,000 (Ten Million Naira) per annum while the remaining two (2) years of the lease i.e. 1st December 2011 to 30th November 2013 shall be N15,000,000 (Fifteen Million Naira only) per annum. However, during the last year of the rent parties agreed to an increment from N15,000,000 (Fifteen Million Naira only) per annum to N18,000,000 (Eighteen Million Naira Only) per annum. The Defendant paid the sum of

N18,000,000 (Eighteen Million Naira Only) for the year 2013 which was the last year of the Tenancy.

The Claimant however discovered that the Defendant was using the property as a hotel contrary to the terms of their agreement which was to use it for residential purposes and on the 30th day of November 2013 when the lease expired by effluxion of time, the Claimant accordingly informed the Defendant of her unwillingness to renew same. The last expired tenure yielded a rent of Eighteen Million Naira Only (N18,000,000) willingly paid by the Defendant. On the 16th of September 2013 the Claimant's Solicitor wrote a letter for termination of the Lease Agreement, after which a 7 Days Notice of Owners Intention to Recover Premises was served on the Defendant on the 10th day of December, 2013 after the lease expired.

On the 13th day of November, 2017, the Defendant informed the Claimant's Counsel that he has vacated the premises, however to the Claimant's dismay the Defendant put the house under lock and key and refused to deliver possession of the said premises.

For the Defendant, the facts are ***"From the processes filed in this suit, the facts are that the parties entered into a lease agreement in 2008 over the property located at No. 6 Asa Street, Maitama, Abuja, for the duration of 5 years. The rate agreed by parties was N10m per annum for the first three years and N15m per annum for the remaining 2 years. Before the expiration of the 5 year lease, parties entered into discussion on the possibility of extending the lease pursuant to which the Defendant paid N3m as consideration for the Plaintiff having agreed to extend the lease. The Plaintiff however reneged on the agreement and subsequently used the Development Control Department to force the Defendant out of the premises in March 2017"***

I have taken a glossy look at the issues submitted for determination. I hold the view that only one issue call for

determination. And that is the issue submitted by the learned Counsel to the Claimant. There is no need to proliferate issues as done by the Defendant's Counsel. So, the issue to be addressed is

> ***"Whether having regard to the pleadings and evidence in the case, the Claimant has discharged the burden of proof on it to be entitled to the reliefs sought in this suit."***

In civil proceedings/cases, the burden of proof as provided by Section 133 of the Evidence Act, 2011 is on the party who will fail if no evidence is given on either side. In **OYOVBIARE VS. OMAMURHOMU (1999) 10 NWLR (PT. 621) 23 AT PAGE 34 PARAS F-G** the Supreme Court per Ogwuegbu, JSC held thus:

> ***"In civil cases, the general rule is that the burden of proof rests upon that party, whether plaintiff or defendant who substantially asserts the affirmative before evidence is gone into. This rule is clearly stated by Eso, JSC in TEWOGBADE VS. AKANDE (1968) NWLR 404 AT 408 thus:***
>
> > ***"The position therefore is this, in a civil case, the burden of proof lies on the person who would fail, assuming no evidence had been adduced on either side. Further, in respect of particular facts, the burden rests on the party against whom judgment would be given if no evidence were produced in respect of those facts. Once that party produces the evidence that would satisfy a jury then the burden shifts on the party against whom judgment would be given if no more evidence were adduced."***

By virtue of this section, the burden of proof lies on the party who asserts a fact to prove the existence of same, while the standard required is on a preponderance of evidence, and this burden lies

on the Claimant. See the Supreme Court, per Katsina-Alu, J.S.C., in **EWO VS. ANI (2004) 3 NWLR (PT. 861) 611 AT 630-631 PARAS F-G.**

We further submit that the burden of proof does not shift from the Claimant to the Defendant until the former has discharged the onus placed on him which is on the preponderance of evidence or balance of probability. It is settled law that parties in civil suit must prove their cases on the preponderance of evidence. It is after the Claimant might have discharge this burden in accordance with the principle of law that the said burden will shift to the Defendant. However, where a Claimant fails to discharge this burden, then, the Defendant needs not prove any fact and the party alleging cannot rely on the weakness of the opponent's case.

It is an established elementary law that the civil matters are determined on the preponderance of evidence and balance of probability. See (1) **ELIAS VS. OMO-BARE (1982) 5 S.C. p.25 and (2) ODULAJA VS. HADDAD (1973) 11 S.C. 357.** Section 137 of the Evidence Act provides for the burden of proof in civil cases. The law is trite that he who asserts a fact has the burden to prove it. This is an ancient common law rule, *ei qui affirmat non ei qui negat incumbit* founded on considerations of good sense that, he who invokes the hand of the law should be the first to prove his case. By the section, the burden of proof is not static, rather, it fluctuates between the parties. Section 137(1) places the first burden on the party against whom the Court will give judgment if no evidence is adduced on either side. In other words, the onus is on the party who would fail if no evidence is given in the case. By section 137(2); the second burden goes the adverse party. Under section 137(3), where there are conflicting presumptions, the case is the same as if there were conflicting evidence.

It is trite law that a Claimant must prove his case via credible evidence of his witnesses and is not at liberty in law to make a case or rely on the weakness of his opponent in order to succeed. See the cases of **AGBI VS. OGBEH (2006) 11 NWLR (PT. 990) 65 (SC);**

ALHAJI OTARU & SONS LTD. VS. IDRIS (1999) 6 NWLR (PT. 606) 330 AT 342 PARAGRAPHS A-B (SC); ATANE VS. AMU (1970) 10 SC 237 AT 243-244 (SC); IMAM VS. SHERIFF (2005) 5 NWLR (PT. 914) 80 AT 186-187 PARAGRAPHS H-B.

The Claimant has by the evidence before the Honourable Court particularly Exhibit A-E showed clearly the agreement entered into between herself and the Defendant as well as all the terms, agreements and also all correspondences between them. The Claimant has also gone ahead to prove that there was an increase in the lease from N15,000,000 (Fifteen Million Naira) to N18,000,000 (Eighteen Million Naira) of which the Defendant paid N3,000,000 (Three Million Naira) as balance to bring the rent paid for the last year to the agreed increased amount of N18,000,000 (Eighteen Million Naira) same is evidenced by Exhibit G tendered by the Defendant.

The Claimant also led uncontroverted evidence to prove that though the Tenancy was determined since 30th day of November, 2013 the Defendant did not deliver possession to the Claimant as at 13th day of November, 2017: the Defendant's Counsel only informed the Plaintiff Counsel that the Defendant has vacated the premises. However, the Defendant kept the premises under lock and key.

Exhibit A (the Lease Agreement) is the basis upon which the Claimant and the Defendant relate as Landlady and Tenants and also the basis upon which all the exhibits tendered by the Plaintiff and Exhibit G tendered by the Defendants derives their validity. From the Pleadings and particularly the evidence adduced by the Claimant it is beyond peradventure that the claim of the Plaintiff is for Recovery of premises and payment for the use and occupation of the premises by the Defendant from the 1st day of December, 2013 till when actual possession is delivered to the Claimant or her approved agent.

It is clear from the pleadings and from Exhibit A that there was a Lease or Tenancy relationship between the Claimant and the Defendant and same was determined on the 30th day of November, 2013. The Lease was not renewed by the parties but the Defendant held over the premises. The Defendant was served with all the requisite notices particularly Notice of Owners intention to Recover Possession (Exhibit E). The Defendant after vacating the premises sometimes in November, 2017 failed to deliver possession to the Claimant but kept the premises under lock and key as at 16th day of March, 2018 when the Amended Writ was filed by the Claimant. The Claimant at paragraphs 20 and 21 of her witness statement on oath testified thus:

> ***"20. That sometimes on or about 13th day of November, 2017, the Defendant informed my Counsel that he has vacated the premises, however, up till date, the Defendant has put the house under locks and keys and had not given possession to the Plaintiff.***
> ***21. That the Defendant had been in occupation/possession of the aforesaid premises since 1st day of December, 2013 till date without paying the requisite rent or Lease Agreement of N18,000,000 (Eighteen Million Naira Only) per year which also results into N1,500,000 (One Million, Five Hundred Thousand Naira Only) monthly."***

The Defendant did not deny or traverse the pleadings contained both at paragraphs 20 and 21 of the Claimant's Amended Statement of Claim and also at paragraphs 20 and 21 of the witness statement on oath of the Claimant. They are deemed admitted by the Defendant. It is the Law that where an averment is not controverted such an evidence is deemed admitted. We refer my lord to the case of **I.A.D. (NIG) LTD VS. SAMPARACO (NIG) LTD (2019) LPELR-47137(CA) AT PAGES 12-15 PARAGRAPHS F-C,** Per BAYERO J.C.A where the Court of Appeal held inter alia:

"In reviewing the evidence adduced by both parties, in particular, the Respondent who had the burden to prove that he is entitled to the declaration of title of the land in dispute as he sought, the trial Court found that the Respondent was relying on Exhibits A, A1, B and B1 to prove his title to the land in dispute. Exhibit A is the Sale Agreement between the Respondent and the District Head of Namtari; Exhibit A1 is the Customary Certificate of Occupancy issued to the Respondent by Yola South Local Government Council. The trial Court had found and rightly too that:- "It is trite law that all civil matters are determined on the preponderance of evidence placed before it. It is the submission of counsel for the Plaintiff that the Plaintiff has by both oral and documentary evidence prove the averments in its pleadings. See LAWAL V. U. B. N PLC & ORS. (1995) LRCN Page 107. The law allows both the Court and parties in civil suits to proceed and obtain Judgment in such circumstances. This instant case is one where a declaratory judgment is sought and which by law is entered upon. See ADEGBESAN VS. R.T.C.M.G.M. (2013) AFWLR (Part 662) 1809 at 1813. PW1 testified as to how he came about the land in dispute Exhibits A, A1, B and B1 were tendered in proof of such. This evidence of PW1 was not challenged under cross examination.....therefore the claim of the Plaintiff is bound to succeed. See EGBUNIKE VS. A.C.B. (1995) 27 LRCN Page 219 at 224. As earlier on indicated, the defendant after series of adjournments at their instance to commence they failed....which eventually led to an order of foreclosure by the Court. The defendant neither call evidence or tendered any document in defence of the Plaintiff's claim, but filed a written address. So the evidence before me is only that of PW1 (Director of the Plaintiff) which is to the effect that he bought the land from the Village Head of Namtari one Ardo M. Kabiru .....covered by a sale agreement Exhibit

A. Thereafter, he applied for Right of Occupancy....this evidence was neither.....challenged or controverted which evidence I believe is cogent and convincing. This being the only evidence before me, I am of the view that the Plaintiff has proved his title to the land in dispute. I therefore determine this issue in favour of the Plaintiff. Accordingly, Judgment is hereby entered for the Plaintiff against the Defendant....." From the evidence led fore the lower Court as revealed from the Record of Appeal the Respondent (who was the Plaintiff before the lower Court), had placed before the trial Court cogent, credible and unchallenged evidence entitling it to Judgment. At page 82 of the transmitted Record of Appeal PW1 proved that he purchased the disputed land from District Head of Namtari on behalf of the Respondent. Exhibit A is the sales Agreement. This piece of evidence was not challenged or controverted during cross examination as reflected at Page 82 of the Record of Appeal. The law is trite that it is deemed admitted. See NIGER BENIN TRANSPORT CO. LTD VS. OKEKE (2005) AFWLR (Part 256) Page 1286".

This decision was echoed in the case of **STATE VS. HARUNA (2017) LPELR – 43351 (CA) AT PAGES 12-13 PARAGRAPHS B-D,** Per DANIEL KALIO, J.C.A held thus:

".....The above pieces of evidence are very explicit about the death of Musa Bello. The witnesses' evidence were neither challenged nor contradicted under cross-examination. It is settled law that evidence of the prosecution which is not contradicted or disputed by an accused is deemed to have been accepted or admitted by that accused person. See UBANI & 2 ORS. VS. THE STATE (2003) 12 SCNJ 111 at 130. Also settled is that where there is unchallenged and uncontroverted evidence, a Court has a duty to act on it where credible. See OFORLETE VS.

THE STATE (2007) 7 SCNJ 162 at 179, 183 and 184. See also MAGAJI VS. NIGERIA ARMY (2008) 8 NWLR PART 1089 p. 338. The evidence of PW1, PW3 and PW4 were credible. As stated earlier, their evidence established that Musa Bello is dead. It is surprising that the learned trial Judge held that the fact that Musa Bello is dead can only be established by a death certificate or post mortem report or the evidence of the medical officer who examined his corpse or the evidence of his widow. That is certainly not the law. PW1, PW3 and PW4 saw Musa Bello when he was alive and seriously injured and also saw his dead body. Their unchallenged and uncontroverted evidence, therefore established that Musa Bello is dead. When a Court shuts its eyes to evidence which is obvious, such as the evidence of PW1, PW3 and PW4, its finding will be held to be perverse. See HAMZA VS. KURE (2010) 10 NWLR Part 1203 p. 630. The finding of the learned trial Judge that the death of Musa Bello was not established is perverse."

There is nowhere in the entire defence of the Defendant or the oral evidence of the Defendant where the Defendant controverted the evidence adduced by the Claimant at paragraphs 20 and 21 of the Amended Statement of Claim. The Defendant made feeble attempt to controvert this piece of evidence during cross-examination where he was asked by the Claimant's Counsel thus:

"Claimant Counsel: "When did you hand over the key to the Plaintiff?
Witness: "We were kicked out by Development Control."

The Defendant having admitted paragraphs 20 and 21 of the Claimant's Amended Statement of Claim cannot turn around to say he was kicked out by the development control: the said answer we submit with respect is an afterthought: the defendant did not tell this court when he was allegedly kicked out by the Development

Control, if it was true that the Defendant was thrown out by the Development control as he alleged. We urge my Lord not to believe the Defendant.

The Defendant's action in keeping the house under lock and keys and his failure to hand over possession to the Landlady or her agent despite vacating the premises on or about the 13th November, 2017 amounts to holding over the premises despite vacating the premises.

The Claimant have proved her case for N1,500,000 (One Million, Five Hundred Thousand Naira) monthly as mesne profits from the 1st day of December, 2013 till when actual possession is delivered to the Claimant by the Defendant.

From Exhibit A (the Lease Agreement) it is clear that the Lease of the Defendant expired by effluxion of time on the 30th November, 2013. It is in evidence that the lease was not renewed by both parties. It is also clear from the pleadings that despite non renewal of the Lease, the Defendant holds the premises after the termination of lease by effluxion of time from the 1st day of December, 2013. We contend that upon the determination of the Lease, the Defendant ought to have delivered or yielded possession to the Claimant. It is the law that where a Defendant holds the premises without handing over possession to the Claimant on whom the right to the reversion resides, it is deemed the Defendant's right to possession to have continued on the same terms and conditions as the original grant till possession has been duly and properly wrested from him by the landlord or reversioner. The Supreme Court per Nnaemeka Agu JSC in the case of **AFRICAN PETROLEUM LTD VS. OWODUNNI (1991) 8 NWLR (PT. 210) Page 20, paras. A-F** held thus:

> ***"Now, a tenancy at sufferance is one in which the original grant by the landlord to the tenant has expired, usually by effluxion of time, but the tenant holds over***

the premises. In such a case the tenant's right to occupation of the premises to which he had come in upon a lawful title by grant is at an end but, although he has no more title as such, he continues in possession of the land or premises without any further grant or agreement by the landlord on whom the right to the reversion resides. One necessary pre-condition of such a tenancy is that the tenant must have come upon the land or premises lawfully. Though he no longer, strictly, has an estate, the law will deem his right to possession to have continued on the same terms and conditions as the original grant till possession has been duly and properly wrested from him by the landlord or reversioner. It is a form of tenancy which, as it were, depends upon the law and not the agreement of the parties and can only be determined either by the landlord's lawful act of forcible entry, where it is still possible, or by a proper action for ejectment after due notices as prescribed by law.

See also **AGBAMU VS. OFILI (2004) 5 NWLR (PT. 867) 540 (Pp. 33-34, paras. E-C)** Per AUGIE, J.C.A.

"Simply defined, mesne profit is only another term for damages for trespass arising from the particular relationship of landlord and tenant. See IGE VS. FAGBOHUN (2001) 10 NWLR (PT. 721) 468; and DEBS & ANOR. VS. CHEICO (NIG) LTD (Supra), wherein the Supreme Court per Oputa, J.S.C., also added:

"The expression 'Mesne profit' simply means intermediate profits – that is, profits accruing between two points of time – that is between the date when the defendant ceased to hold the premises as a tenant and the date he gives up possession. Rent is different from mesne profit. Rent is liquidated, mesne profit are not. Rent is operative during the subsistence of the tenancy,

while mesne profit start to run when the tenancy expires and the tenant holds over. The action for mesne profit does not lie unless either the landlord has recovered possession, or the tenant's interest in the land has come to an end, or his claim is joined with a claim for possession."

Mesne profits are, therefore, the profits accruing from the date the defendant ceases to hold the premises as a tenant to the date he gives up possession."

In **PETGAS RES. LTD VS. MBANEFO (2007) 6 NWLR (PT. 1031) 545 at 560 Paras. A – B,** the Court of Appeal per Denton – West J.C.A held has follows:

"At the end of a tenancy, the tenant is duty bound to yield up possession. If he fails, he becomes a trespasser. This is because his continued possession is a wrongful act. Being a trespasser, he is liable to pay damages for trespass. It is that damages that is called mesne profit. See DEBS VS. CENICO LTD (1986) 3 NWLR (PT. 32) 846."

See also **SOBANDE VS. IGBOEKWE (2016) LPELR-40321 (CA).** (Pp. 38-39, Paras. D-E) Per IYIZOBA, J.C.A.

"Mesne profits as used in the cases of VINCENT VS. VINCENT (supra) and AFRICAN PETROLEUM VS. OWODUNNI (1991) 8 NWLR (PT. 201) 391 in relation to trespasser is used in a technical sense to refer to tenant holding over after determination of his tenancy. Such tenant is viewed technically as a trespasser his tenancy having been determined. In the case of MARINE & GENERAL ASSURANCE VS. ROSSEK (1986) 1 ALL NLR (PT. 1) 403 at 416 Oputa, JSC said:

"Mesne profits can also be equated to the value of use and occupation of land during the time it was

held by one in wrongful possession and I may add here, also by one who has not agreed on any rents with the landlord (and was therefore technically a trespasser) even though such an occupier cannot strictu sensu be described as a trespasser."

Mesne profit is defined by the Black's Law Dictionary (supra) at page 1246 as "The profits of an estate received by a tenant in wrongful possession between two dates."

Consequently, based on the above, it is clear that mesne profits are applicable to landlord tenancy relationship where such tenancy has been determined and the tenant is holding over.

By Exhibit G, it is crystal clear that the last rent paid by the Defendant to the Claimant is N18,000,000.00 (Eighteen Million Naira) for the year 2013, which expired on the 30th day of November, 2013. By virtue of this payment it is clear that parties have agreed to the increment of the annual rent from N15,000,000.00 (Fifteen Million Naira) to N18,000,000.00 (Eighteen Million Naira).

The Defendant while on cross-examination Admitted paying the sum of N3,000,000 (Three Million Naira) as evidenced by Exhibit G. The said document which is Exhibit G speaks for itself. In **ONOJA SA'ID EMEJE VS. IHIABE ABDUL POSITIVE & ORS. (2008) LPELR-4102 (CA) where the Court** Per Omoleye, J.C.A. held thus:

"It is also trite that when a document is duly pleaded, tendered and admitted in evidence, that document becomes the best evidence of its contents and therefore speaks for itself. It is the contents of the whole document that are in evidence. That being the case the Court cannot disregard the document ATANDA VS.

IFELAGBA (2003) 17 NWLR (PT. 849) p. 274"....(Pp. 25-26, paras. G-A).

It follows that based on Exhibit G tendered by the Defendant, if the Defendant was to pay for the rent for the following year the amount would have been N18,000,000.00 (Eighteen Million Naira) for the year commencing from 1st December 2013 to 30th November, 2014. Exhibit G is very clear as to the increase in the rent as agreed by parties.

On the Three Million Naira increment, the wordings of Exhibit G are very clear and same should be given their ordinary meaning. See the case of **UGWU VS. ARARUME (2007) 12 NWLR (PT. 1048) 365, where the Court held thus:**

> ***"It is only when the literal meaning result in ambiguity or injustice that a Judge may seek internal aid within the body of the statute itself or external aid from statutes in pari material in order to resolve the ambiguity or avoid doing injustice. See MOBIL OIL (NIG) LTD. VS. FBIR (1977) 3 SC 53. The above is an exception to the rule rather than the rule. In the construction of a statute, the primary concern of a Judge is the attainment of the intention of the Legislature. If the language used by the Legislature is clear and explicit, the Judge must give effect to it because in such a situation, the words of the statute speak the intention of the Legislature.***

Exhibit G is the communication of the payment of the sum of additional Three Million Naira for 2013 rent pursuant to the agreement of parties to the increase of rent from N15,000,000.00 (Fifteen Million Naira) to N18,000,000.00 (Eighteen Million Naira) which the Defendant willingly paid and communicated same to the Claimant. In **OJOKOLOBO VS. ALAMU (1987) 3 NWLR (PT. 61) 377. (Pp. 31-32, paras. C-C),** Tobi, J.S.C held thus:

> ***"The words in a statute are primarily used in their ordinary grammatical meaning or common or popular sense and generally as used as they would have been ordinarily understood. See GARBA VS. FCSC (1988) 1 NWLR (PT. 71) 449. In construing a statute, the Judge must pay particular attention to the grammar or syntax in or underlying the construction. This does not make the Judge or turn him as a grammarian. By his professional training and his regular application of that training to the construction of statutes he becomes an expert. His expertise coupled with the fact that as a Judge, words are his tools, his professional ability to construe the grammar or syntax in a statute cannot be in doubt."***

On the claim of the Claimant for general damages, the Defendant breached Clause 3(h) and 3(k) of the Lease Agreement as stated in paragraphs 12, 13, 14, 20 and 21 of the Claimant's Amended Statement of Claim. The Defendant never denied these, rather he admitted using the premises as a hotel contrary to the express provisions in the agreement not to use the premises for residential purposes only. The use of the premises by the Defendant other than for residential is a breach of the Lease Agreement. The Defendant's failure to yield up peaceful possession to the Claimant is also a breach of the Lease Agreement. The position of law is that the Claimant upon proof of his Claim is entitled to General Damages. The Court of Appeal per Uwa, JCA, in **UBA PLC VS. SALMAN (2018) LPELR-45698 (CA)** held as follows:

> ***"Under the seventh issue, the appellant alleged that the award of general damages to the respondent as claimant was wrongful. I would start with the meaning, nature and scope of general damages as given by the Supreme Court. In CAMEROON AIRLINES VS. OTUTUIZU (2011) LPELR – 827 (SC) P. 31, PARAS. C – D, his Lordship Rhodes – Vivour, JSC defined it thus:***

> ***"General damages are thus losses that flow naturally from the adversary and it is generally presumed by law, as it need not be pleaded or proved. See UBN LTD VS. ODUSOTE BOOKSTORES LTD (1995) 9 NWLR PT. 421 P. 558. General damages is awarded by the trial Court to assuage a loss caused by an act of the adversary."***

Similarly in **UBN PLC VS. ALHAJI ADAMS AJABULE & ANOR (2011) LPELR – 8239 (SC) P. 32, PARAS C – D, his Lordship, Fabiyi, JSC held that:**

> ***"General damages are said to be damages that the law presumes and they flow from the type of wrong complained about by the victim. They are compensatory damages for harm that so frequently results from the tort for which a party has sued, that the harm is reasonably expected and need not be alleged or proved. They need not be specifically claimed. They are also termed direct damages; necessary damages."***

General damages are those which the law implies in every breach of contract. They are compensatory and need not be alleged or proved. As stated above, they need not be specifically claimed. They are for losses that flow from the adversary and awarded by the trial Court to assuage a loss caused by the adversary. See also the case of WAHABI VS. WILFRED OMONUWA (1976) LPELR – 3469 (SC) P. 17, PARAS. C – D; 4 SC (REPRINT) P. 62; (1976) ANLR P. 285. The respondent gave evidence to the effect that the act of dishonouring his withdrawal slip of N300,000.00 (Three Hundred Thousand Naira) was done in the presence of his business partner who had held him in high esteem. This evidence was not contradicted or challenged. General

> damages on the other hand are awarded as compensatory for the harm or damage done. The Court having held that dishonouring the respondent's mandate to honour his withdrawal slip on 12/3/12 when he had enough funds in his savings account was a breach of the appellant's contract with the respondent, he was entitled to the general damages claimed." Per UWA, J.C.A (Pp. 41-43 paras. C).

The Defendant's Counsel argued at page 4, paragraph 4.3 of the Defendant's Final Written Address that paragraph 2 of the Lease Agreement clearly states the financial implication of the lease and that the Agreement is the only executed agreement by parties. I hold that Exhibit G tendered by the Defendant contradicts the submission of the Defendant. Exhibit G is clear that the parties have varied the amount earlier agreed and have agreed to a new amount which is N18,000,000.00 (Eighteen Million Naira).

The Defendant Counsel argued at pages 4 and 5 paragraphs 4.4 to 4.7 that Three Million Naira was paid in consideration of the Claimant's agreeing to extend the lease and went ahead to reproduce part of the letter evidencing the payment. With greatest respect this argument and reproduction of part of the Exhibit without reproducing all is misconceived and attempt to take benefit from a portion of a document he tendered and distance himself from the part of the same document that does not favour his case. For the avoidance of doubt, may I reproduce the entire Exhibit G:

27th June 2013

H. I. Dederi, Esq.
H. I. Dederi & Co.
Plot R-2, Behind Gidan Dan 'Asabe,
200 Road, Kano,
Kano State.

Sir,

PAYMENT OF ADDITIONAL N3,000,000 (THREE MILLION NAIRA ONLY) FOR 2013 RENT IN RESPECT OF NO. 6 ASA STREET, MAITAMA, ABUJA.

Pursuant to the agreement of parties at the last joint meeting where our Client, Messrs Berkshire Hotel & Resorts Ltd agreed to pay an amount higher than the earlier agreed rent of N15m for this year, we have given a cheque in the sum of N3m to Mr. Abdullahi Bello as you directed.

This will now bring the total amount paid as rentals for this current year to N18m.

You would recall that our Clients agreed to pay the additional sum based on the understanding of both parties that the lease will be extended for a further term of ten (10) years, commencing at the beginning of December 2013. We had earlier forwarded a draft of the Lease Agreement for your comments. We still await your kind response on the draft.

Regards,

Yours Faithfully,
PP: Platinum Standard Law Firm

DUBEM ANENE, ESQ."

May I briefly x-ray Exhibit G reproduced above: from the date on the exhibit, it is clear that it was written during the last year of the Lease agreement. From the heading and the first paragraph of Exhibit G, it is clear beyond doubt that parties agreed to an increment in the rent and same was willingly paid by the Defendant. The second paragraph of Exhibit G is loud enough to

show that the total amount paid as rent by the Defendant to the Claimant based on the agreement is N18,000,000.00 (Eighteen Million Naira) and that was the last rent paid by the Defendant to the Claimant in 2013.

The Defendant Counsel argued further particularly at paragraphs 4.6 and 4.7 that the Claimant did not keep her promise to extend the lease rather he wrote Exhibit B and E, she submitted rhetorically that it is morally unjust for the Claimant to contend that the last rent paid was N18,000,000.00 (Eighteen Million Naira).

Contrary to the position of the Defendant above, I hold that if the Defendant feels his right was breached by the Claimant by virtue of Exhibits B and E, he would have approached the Court for remedy. This the Defendant failed to do, he cannot turn around to argue morality in the face of express agreement between the parties where the Defendant agreed to pay and indeed paid N18,000,000.00 (Eighteen Million Naira) as his last rent.

Contrary to the Defendant's argument at page 6, paragraphs 4.8, alleging that N3,000,000.00 (Three Million Naira) was paid for a failed consideration, that the agreed rent was N15,000,000.00 (Fifteen Million Naira) and that there is no sufficient fact to establish that the last rent paid was N18,000,000.00 (Eighteen Million Naira), I hold that the N3,000,000.00 (Three Million Naira) paid was to bring the total amount paid as rentals for that current year (2013) to N18,000,000.00 (Eighteen Million Naira) which was the prevailing market value of the premises at the time. We refer my Lord to paragraph 5 of the Claimant's Reply to the Defendant Statement of Defence and Defence to Counter-Claim and also Exhibit G and I discountenance the argument of the Defendant's Counsel.

With respect to the Defendant argument at pages 7, 8 and 10 paragraphs 4.10 to 4.14 and 5.9 we contend that the Defendant's

argument is ill-fated and bound to fail, the authorities cited therein are not applicable to the circumstances of this case: In answering the question raised by the Defendant in paragraph 4.10, paragraph 3.44 above and submit further that the Counter-Claim filed by the Defendant was abandoned as no evidence or witness statement was filed and adopted pursuant to the Counter-Claim. The law is trite that Counter-Claim is an independent claim that must be proved independently. The Respondent in his purported Counter-Claim did not file any witness statement accompanying same, neither was any evidence led in support of same. In **ALI VS. SALIHU (2011) 1 NWLR (PT. 1227) 227 AT 21 PARAGRAPHS E-G,** the Court held thus:

> ***"This mode of commencement of action is clearly one of the various modes permitted by the Civil Procedure Rules of the High Court of Kogi State. The filing of a counter-claim by the respondents in the action of the appellant does not derogate from the fact that the respondents' counter-claim is a separate and independent action. The respondents' counter-claim being a separate and independent action must therefore not only be instituted in accordance with the rules of Court but also must comply with the rules of pleadings"***

By Order 2 Rule 2 (2) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018,
2. (2) "All Civil proceedings commenced by writ of summons shall be accompanied by:
(a) Statement of claim;
(b) List of witness(es) to be called at the trial;
(c) Written statements on oath of the witnesses except a subpoenaed witness,
(c) Copies of every document to be relied upon at the trial and
(d) Certificate of pre-action counselling; as in Form 6

(4) Where a Claimant fails to comply with rules (2) and (3) above, his originating process shall not be accepted for filing by the registry"

The Defendant who did not lead any evidence in support of his counter-claim has abandoned his counter-claim. Faced with a similar scenario, in **PABOD SUPPLIES LTD VS. BEREDUGO (1996) 5 NWLR (PT. 448) 304 AT 322 PARAGRAPHS D-F,** it was held thus:

> ***"Again, it must be mentioned that a counter-claim is a claim which must be proved by evidence. From the contents of the record of proceedings there is nowhere the appellant led any modicum of evidence in support of its counter-claim."***

I hold that the Defendant's argument at paragraph 4.11 to 4.14 of his final address is hinged on pure technically which the Court have since departed from. We submit that the position of law is that even where there is irregularity in giving notice, the filing of an action by the landlord to regain possession of the property has to be sufficient notice on the tenant, that he is required to yield up possession. The Supreme Court per Ogunwumiju J.S.C in the recent case of **PILLARS (NIG) LTD VS. DESBORDES (2021) 12 NWLR (PT. 1789) PAGE 122 at 144 Paragraph C-H held thus:**

> ***"The justice of this case is very clear. The Appellant has held on to property regarding which it had breached the lease agreement from day one. It had continued to pursue spurious appeals through all hierarchy of courts to frustrate the judgment of the trial Courts delivered on 8/2/2000 about twenty years ago. Afterall, even if the initial notice to quit was irregular, the minutes the writ of summons dated 30/5/1993 for a possession was served on the appellant, it served as adequate notice. The rues of faulty notice used by tenants to perpetuate possession in a house or property which the landlord had***

slaved to build and relies on for means of sustenance cannot be sustained in any just society under the guise of adherent to any technical rules. Equity demands that wherever and whenever there is controversies on when or how notice of forfeiture or notice to quit is disputed by the parties, or even where there is irregularity in giving notice to quit, the filing of an action by the landlord to regain possession of the property has to be sufficient notice on the tenant that he is required to yield up possession. I am not saying here that statutory and proper notice to quit should not be given. Whatever form the periodic tenancy is whether weekly, monthly, quarterly, yearly etc., immediately a writ is filed to regain possession the irregularity of the notice if any is cured. Time to give notice should start to run from the date the writ is served if for example a yearly tenant, six months after the writ is served and so on. All the dance drama around the issue of the irregularity of the notice aimed. The Court would only be required to settle other issues if any between the parties. This appeal has absolutely no merit and it is hereby dismissed."

Contrary to the Defendant's argument at pages 8 to 9, paragraphs 5.2 to 5.6 of his final written address that the Claimant cannot claim arrears of rent and mesne profit. The law is certain that where the Claimant claims arrears of rent and mesne profits it shall be treated as one claim. Section 13 of the Recovery of Premises Act CAP 544, Laws of FCT Nigeria provides;

"13. Claims for arrears of rent and mesne profits
The amount claimed under any writ or plaint for arrears of rent and mesne profits shall be treated as one claim."

On the circumstances of this case and the evidence adduced that the Claim for arrears of rent and mense profits should be treated as one claim and we urge my lord to grant the claim for mesne

profits in the sum of N1,500,000.00 (One Million, Five Hundred Thousand Naira) based on the last rent paid by the Defendant to the Claimant.

The Defendant argued at pages 10 to 13 and 14 paragraphs 5.8 and 7.2 to 7.6 that the Defendant was given up to 30th day of March, 2017 to vacate the premises and that the premises was sealed off on the said deadline and he concluded by saying that "it therefore means that the Claimant's calculation is wrong as the Department of Development Control who the Claimant approached to harass the Defendant out of the premises succeeded. The premises were sealed in March 2017." He further submitted that the Defendant have proved his counter-claim. I hold with respect borrowing the words of Tobi J.S.C in **UGWU VS. ARARUME (2007) ALL FWLR (PT. 377) 808 at 862 paragraph B.** to wit "It is this type of thing that makes the Hausa man exclaim, Haba!"

The Claimant maintained in her testimony that she does not work with Development Control, he never instigated them against the Defendant, she was only invited to the meeting as the owner of the premises wherein the Department of Development Control noticed a contravention and that she was not aware that the Defendant was using the premises in contravention of the purpose for which it was leased. The Claimant having denied the allegation of the Defendant was using the premises in contravention of the purpose for which it was leased. The Claimant having denied the allegation of the Defendant, the onus is on the Defendant to show that, the Claimant indeed instigated the Departure of Development control. This we submit the Defendant failed woefully to proof. The law is trite that he who assert must proof.

The Defendant who alleged that the premises was sealed off on the 30th day of March, 2017 did not adduce any evidence to show that the premises was sealed off. In one breath the Defendant alleged that the premises was sealed off under cross examination, the Defendant alleged that he was kicked out of the premises.

None of his claims of being kicked out or the premises being sealed off was supported with a dint of evidence. After all, an averment without admissible documents in support where such facts ought to be supported by documentary evidence only amounts to pleading without evidence. It is common knowledge that where the Department of Development Control seals off a premises they put an inscription "SEALED" on the said premises. The Defendant who alleged that the premises was sealed did not tender the picture of the premises sealed by the Development Control, did not tender any picture of his properties being thrown out by the Development control neither did he inform his landlady that he was thrown out or the premises was sealed off. This argument of the defendant we submit with respect, is an afterthought.

I hold on the whole that the Defendant failed to lead evidence in proving his Counter-Claim against the Claimant. The counter-claim is dismissed.

From the totality of evidence before this Honourable Court, it is crystal clear that the Claimant has proved his case and the Defendants on the other hand have not rebutted or discredited the evidence and claims of the Claimant. I resolve the sole issue in favour of the Claimant and grant all the reliefs of the Claimant.

.....
S. B. Belgore
(Judge) 14/5/2024