IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION
HOLDEN AT JABI FCT ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

SUIT NO: CV/998/2019

BETWEEN:

SOUTHGATE PROPERTIES LTD……CLAIMANT

AND

SALEMS EXPLORATION NIG. LTD……DEFENANT

JUDGMENT

By the writ of summons and statement of claim dated the 5th day of February, 2019, the claimant seeks the following:

a. An order of this Honourable Court ejecting the defendant from the demised premises lying and situate at No. 56 constitution avenue, Gaduwa Abuja FCT and giving possession of same to the plaintiff.
b. An order of this Honourable Court directing the defendant to pay to the plaintiff the sum of N2,500,000.00 (Two Million, Five Hundred Thousand Naira) being balance of rent unpaid from 18th December, 2014 to 17th December, 2015.
c. An order of this Honourable Court directing the defendant to pay to the plaintiff the sum of N15,000,000.00 (Fifteen Million Naira) being arrears of rent from 18th December, 2015 to 17th December, 2018 at the rate of N5,000,000.00 (Five Million Naira per annum).
d. An order of this Honourable Court directing the defendant to pay the sum of N416,666.67 per month

being mesne profit from 18th day of December, 2018 until possession is given up.

e. An order of this Honourable Court directing the defendant to pay all outstanding water bill, solid and liquid wastes bills and electricity bill up to the time of vacation of the demised premises.
f. 10% interest on the judgment debt from the date of judgment until the debt is finally liquidated.
g. Cost of this action N1,000,000.00 (One Million Naira).

By the statement of claim, the claimant averred that the defendant is a yearly tenant entered the demise premises on the 18th December, 2010 into a tenancy Agreement for one year certain term at a yearly rent of N3,800,000.00 (Three Million, Eight Hundred Thousand Naira) being rent from 18th December, 2010 to 17th December, 2011 and at the expiration of the first term of the tenancy the defendant renewal for a yearly term and the defendant has remained in the demise premises till date.

The plaintiff averred that the defendant's yearly rent was increased from Three Million, Eight Hundred Thousand Naira via a letter dated the 10th October, 2011, and the defendant owes the claimant the sum of N15,000,000.00 (Fifteen Million Naira) being arrears of rent from the 18th December, 2015 to 17th December, 2018 at the rate of Five Million Naira per annum, and the sum of N2,500,000.00 (Two Million, Five Hundred thousand Naira) being balance of rent unpaid from the 18th December, 2014 to 17th December, 2015, and upon the renewal of the tenancy agreement aforesaid, the defendant refused to pay his rent since 18th December, 2014 till date despite several demand letter from the claimant, and a seven days notice of owner's intention to recover possession of premises was served on the

defendant by the court bailiff on the 10th day of December, 2018 at 4:30pm.

The claimant averred that the defendant is in breach of the tenancy and has failed, neglected and refused to pay his rent till date even though he is still in occupation of the demised premises.

The statement of claim was accompanied by a witness statement on oath dated the 5th February, 2019.

The defendant filed its statement of defence dated the 24th October, 2019 accompanied by a written witness statement on oath.

In the statement of defence, the defendant admits paragraphs 1, 2, 3 and 4 of the statement of claim and paragraph 5 to the extent that it acknowledged the receipt of the said letter of the claimant dated the 10th day of October, 2019 but did not agree to the terms of the said letter and wrote a reply dated 17th of November, 2011 in which it only agreed to renew its rent of 2011 to 2012 at the same rate of N3,800,000.00 and equally state in the said reply that it would consider a renew of the tenancy rate in the 2012/2013 tenancy year.

The defendant denied paragraph 6 of the claimant's statement of claim and averred that it paid its rent for that period and that it is not indebted to the claimant for the balance of rent to the tune of N2,500,000.00 being balance of an unpaid rent from 18th December, 2014 to 17th December, 2015.

The defendant denied paragraph 7 of the statement of claim and states that it is not indebted to the claimant to the tune of N15,000,000.00 being arrears of rent from 18th December, 2015 to 17th December, 2018 at the rate of N5,000,000.00 per annum.

The defendant denied paragraph of the statement of claim to the extent that it actually paid the rent but initially had difficulty in paying the rent of the said period as at when due because of these fact that the whole house was engulfed by fire and was burnt down which necessitated the defendant to spent over N3,000,000.00 (Three Million Naira) in renovating, repairing and fixing back the demised premises to its original state coupled with the fact that the defendant paints and renovates the annually with its own money totaling N500,000.00.

The defendant averred that it made the following payments:

1. Tenement rate of Abuja Municipal Area Council N5,000,000.00, and also denied paragraph 9 and stated that it was never served with the copy of the said purported 7 days notice and it is not in breach of the tenancy and has not failed or neglected to pay its rent till date.

The defendant counter claimed all that was claimed in the endorsement to the writ of summons saying that it is not indebted to the claims.

In the course of the trial, the claimant put in two witnesses and the defendant put in one witness, and at the end of the trial, the two counsel proffered final written addresses and adopted same.

In his final written address, the claimant proposes five issues for determination, thus:

1. **Whether the jurisdiction of this court to entertain this suit has not been fettered when the tenancy of the defendant has not successfully proved to be determined by the claimant by reason of non service of the requisite statutory notices on the defendant?**

2. **Whether the claimant's claim for mesne profit can succeed where the tenancy of the defendant has not been determined?**
3. **Whether the counsel/Agent/Solicitor to the claimant had a written consent/authority of the claimant before the purported service of the seven days owner's intention to apply to recover possession?**
4. **Whether the unilateral increment of the rent by the landlord without the prior consent of the tenant and without any improvement on the demise premises in this case was valid?**
5. **Whether from the totality of all the evidence adduced in this matter, the claimant has proved his case to be entitled to the reliefs sought as contained in the writ of summons and the statement of claim?**

On the issue No. 1, the counsel to the defendant submitted that failure to give statutory notice of owner's intention to apply to recover possession is a condition precedent to the exercise of jurisdiction, and he cited the case of **SUE V. Nig. Cotton Board (1985) 2 NWLR (pt 5) p. 17.** The counsel further argued that the proof of service of statutory notice is the determining factor as to whether or not a writ of recovery of possession is valid, and such proof is essentially based on a preponderance of evidence, and he cited the case of **Soucchi M. and F Co. Ltd V. Alabi (1996) 7 NWLR (pt 462) 627.** The counsel urged the court to strike out the claim that service has been effected, so as to afford the claimant the opportunity to bring new action after complying with the requirement of serving valid quit notice. The counsel also referred to the case of **Eleja V. Bangudu (1994) 3 NWLR (pt 334) p. 534** to the effect that before the

court assume jurisdiction a statutory notice of 7 seven days has to be served.

The counsel submitted that on the 4th February, 2020, the witness Mr. Falius Fabiyi was asked whether in paragraph 10 of the witness statement on oath he averred that he served 7 days owner's intention to recover possession on the tenant, and his witness answered that he wouldn't know whether any lawyer served it.

The counsel submitted also that under cross examination, Idris Garba Mohammed was asked whether he served the notice directly on the defendant and he answered that he served by pasting, and whether there was any court order, and the witness answered in the negative, and the counsel further submitted that from the totality of the evidence adduced from the PW1 and PW2 under cross-examination, two things have been incontrovertibly established, those are that it was established that there is a contradiction between the evidence of the two witnesses with regards to service of the owner's intention to apply to recover possession.

The counsel contended that the PW1 is not certain whether notice of owner's intention to recover possession was served at all on the defendant by his lawyer.

The counsel posed this question: can such a notice served by pasting and by substituted means be valid in absence of a valid order of this court?

The counsel submitted that it is trite law that parties are bound by their pleadings, and parties are not allowed to approbate and reprobate, and he cited the case of **Anike V. S.P.D.C.N. Ltd (2011) 7 NWLR (pt 1246) at 227.** The counsel cited the case of **Dagash V. Bulama (2004) All FWLR (pt 212) 1666** to the effect that a witness who testifies falsely on a matter within his or her personal knowledge leaves no room

for any court to credit him or her with the issues before the court. And the case of **C & C Construction V. Okha (2004) FWLR 73** to the effect that the court cannot pick and choose between two contradictory evidence, and he added with the cases of **Boy Muka V. The State (1976) 10 – 11 SC** and **Waziri Ibrahim V. Shehu Shagari (1983) NSCC 431.**

The counsel submitted that any evidence which is at variance with the pleading goes to no issue and such evidence will have no value, and it will be discountenanced and he cited the case of **Ogboda V. Adulegbo (1971) All N.L.R. 68.** He also submitted that where a witness gives evidence which contradicts an earlier evidence on the same issue, both evidence should be disregarded, and he cited the case of **Panache Communications Ltd. V. Aikhomu (1994) NWLR (pt 425)** to the effect that court cannot act on an evidence that is contradictory.

The counsel submitted that the evidence of PW1 and PW2 which is at variance with the averments in the pleadings of PW1 goes to no issue and should be discountenanced, and he cited the case of **Allied Bank Nig. Ltd. V. Akabueze (1997) 6 NWLR (pt 509) p. 374.**

The counsel submitted that the law is that where there is non-compliance with the position of the statute, the proceedings is a nullity, and no matter well conducted, and he cited the case of **Nigercare DCO Ltd. V. Adama S.W.B. (2008) 20 WRN at 189.**

On the issue No. 2, the counsel submitted that the tenancy of the defendant has not been proved to be validly determined by the claimant.

The counsel submitted that the law is that where the tenancy is not properly determined, there can be no position of awarding mesne profit, and he cited the case of

papersack (Nig.) V. Odutola (2004) 13 NWLR (pt 891) p. 519 and submitted further that this Honourable Court should hold that the claimant cannot sustain the claim for mesne profit when the tenancy has not been validly determined, and he cited the cases of **African Petroleum Ltd. V. Owodunsin, (1991) 8 NWLR (pt 210) 391;** and **Metal Construction (W.A) V. Aboderin (1998) 8 NWLR (pt 563) 568.**

The counsel urged the court to resolve this issue in favour of the defendant.

On the issue No. 3, the counsel submitted that the claimant rushed to the court without obtaining the consent or authority of the law invalid before issuing the said purported notices, and this situation robs the court of the jurisdiction to hear and determine this case. The counsel submitted that assuming but not conceding that the notices are valid in law, they have become invalid and no effect as the agent did not exhibit any letter of authority from the landlord, which empowered him to issue the purported notice and the writ of summons; he cited the case of **Ayinke Stores Ltd. V. Adebogun (2008) 10 NWLR (pt 1096) 612** to the effect that there must be authority by the landlord for the counsel to act, and he cited the case of **Iheanacho V. Uzochukwu (1997) 2 NWLR (pt 487) 257.**

The counsel submitted that the purported notice is invalid and therefore urged the court to strike out this suit. On the judicial precedent, the counsel cited the case of **Anambra State V. A.G Federation (1993) 6 NWLR (pt 352) p. 221** to the effect that any decision by a court without jurisdiction is futile.

On the issue No. 4, the counsel submitted that tenancy is in the nature of contract, and once the landlord cannot unilaterally increase that rate as that would amount to a

breach of contract, and he cited the case of **Yahaya V. Chukwura (2002).**

The counsel submitted that the defendant did not agree to pay the said rent of N5,000,000.00 and therefore the letter dated 17th November, 2011 and admitted in evidence as EXH. D2, and the claimant reply are agreeable to the other of the defendant hence they are expecting his cheque to cone bearing the old rent of N3,800,000.00.

The counsel submitted that the claimant never pleaded and tendered any document before this court that there was any improvement on the demised premises in terms of renovation and repairs, rather it was the defendant who spent so much to repair the house and return it to its original state when the house was completely razed down by fire.

The counsel submitted that the PW1 testified under cross-examination that there was a fire incidence and that he was aware of the tenancy agreement to the effect that the property would be insured against fire, however, there was no indemnity from any insurance company to the defendant in respect of the said five incidence over which the defendant spent over N3,000,000.00.

The counsel recounts what transpired during cross-examination. The counsel submitted that the law is that the landlord cannot unilaterally increase the rent without the consent of the tenant and he cited the cases of **Udi V. Izedomwen (1990) 2 NWLR (pt 132) 357;** and **Yahaya V. Chukwura (supra)** and urged the court to hold that failure of the claimant to secure the consent of the defendant first before assuming that the defendant had agreed to pay the said increased rent of N5,000,000.00 is fatal to his claim for the rent, and he urged the court to so hold, citing the cases

of **McFoy V. UAC (1961) 3 PER 1169** and **Ajibade V. Pedro (1992) 5 NWLR (pt 241) p. 257.**

The counsel submitted further that the court cannot make agreement for the parties and parties are bound by the terms of their agreement.

On the issue No. 5, the counsel submitted that the claimant has not proved his case to entitle him to the reliefs sought as there is no credible evidence led whether oral or documentary to support its case, and in civil cases are decided on the preponderance of evidence and on balance of probability, the court will see that the defendant's case weigh more than that of the claimant and he refer to the case of **Madam Rabiatu Odofin Bello & Ors V. A.A. Mogaji (1978) Vol. II NSCC 275 at 277** and submitted further that the evidence of the defendant is unchallenged and uncontroverted and therefore credible, and he urged the court to discountenance with the evidence of the claimant.

In his final written address, the counsel to the claimant proposes four issues for determination, thus:

1. **Whether this Honourable Court has the jurisdiction to hear and determine this suit from the totality of evidence led before the court?**
2. **Whether the plaintiff has established his case in accordance with the law to warrant the grant of the reliefs sought in this matter?**
3. **Whether the plaintiff has proved its case on the balance of probability considering plaint and evidence adduced?**

4. **Whether the plaintiff is entitled to cost for prosecuting this matter, mesne profit and interest?**

On the issue No. 1, the counsel to the claimant answer the above issues in the affirmative that this Honourable Court is clothed with the jurisdiction to hear and determine this suit on the merit, and it is the statement of claim that is to be looked at to determine whether or not the court has jurisdiction, and he cited the cases of **Chief Numogunsam Adeyemi V. Opeyori (1976) 9 – 10 SC 31**, and **Akinbi V. Military Gov. of Ondo State (1990) 3 NWLR (pt 140) p. 525 at 592.** To the counsel, it is settled law that in determining upon a preliminary objection on whether the court has jurisdiction to entertain a claim shall only consider the averments in the statement of claim, and he cited the cases of **Shell BP Petroleum Devt. Co. Ltd V. Nasaruga (1976) 6 SC 89 at 94** and **Adamu V. A.G. Borno State (1996) 8 NWLR (pt 465) 203 at 288 – 289.**

According to the counsel, the plaintiff brought this action for recovery of premises and arrears of rent and the defendant was served with the 7 days notice of owner's intention to recover the premises. The counsel further argued that paragraph 4(ii) of the lease agreement, the defendant was supposed to give three months notice of his desire to continue the rent but the defendant never did, and it is trite that notice to quit is usually obviated in the case of a fixed tenancy since the term of expiration is normally known, and he relied on the case of **Nweke V. Ibe (19740 4 ECSCR 54.** He added that what most the jurisdiction of the court is lack of service of any notice at all whether regular and irregular and if the plaintiff serves a notice, the determination of whether or not the notices are regular or valid is in the substantive matter which will only be resolved

when evidence is called and he cited the case of **Iwuagolu V. Azyka (2007) 5 NWLR (pt 1028) 613.**

The counsel argued that the defendant is in arrears of rent for years, and sections 7 and 8 of the Recovery of Premises Act does not provide that service of notice to quit, where the tenant is a periodic tenant and has a lease agreement; and he cited the case of **Iheanacho V. Uzochukwu (supra).**

The counsel submitted that the only appropriate notice to serve is the seven days owner's intention to apply to recover possession which is EXH. AB 1 & 2, and he cited the case of **Splinters Nig. Ltd. V. Oassis Finance Ltd (2013) 18 NWLR (pt 1385) p. 220 – 221, paras. G-B** to the effect that it is only when the tenancy has not expired that there will be need to determine same by notice to quit, and that a notice to quit may be dispensed with when a tenancy has been validly expired by effluxion of time; and the tenancy of the defendant expires by effluxion of time as at 18th December, 2017 in which the defendant was served with a letter, and the defendant supposed to give three months notice of his desire to continue the rent but the defendant never did. The counsel argued that the tenancy of the defendant automatically converted to a tenant at will which requires only 7 days notice of owner's intention to apply to recover possession, and he cited the cases of **Bocas Nigeria Ltd V. Wema Bod Estates Ltd (2016) LPELR 40193 and Odutola V. Papersack Nig. Ltd (2006) 18NWLR (pt 1012) 407.**

The counsel argued that section 28 of the Recovery of Premises Act provides for service of notice by substituted means, and he quoted the provision of the section, and the case of **Ranco Trading Co. Ltd V. UBA Ltd (1988) 4 NWLR (pt 547).** He argued that service is effected on a company by

dropping the process at its address or last known address and such shall be deemed personal service, and he cited the case of **Mark V. Eke (2004) 5 NWLR (pt 865) p. 54 at 79 – 80.**

The counsel submitted that mesne profit is equated to the value of the use and occupation of the property during the time it was held by the person in wrongful occupation, and he referred to the case of **Marine and General Assurance V. Rossek & Anor NSCCC Vol. 17,558.** He added that it can only be maintained when the tenancy has been determined and the tenant has become a trespasser, and he cited the case of **Abeke V. Odunsi (2003) 13 NWLR (pt 1370) 1;** and **Chaka V. Messrs Aerobell Nig. Ltd. (2012) 12 NWLR (pt 1314) 321, paras. C-D.**

The counsel submitted that the defendant was in arrears of rent of N17,500,000.00 and the mesne profit runs from 18th December, 2018 in which the defendant paid three million after the expiration of 7 days owner's intention to apply to recover possession.

The counsel cited the case of **Texaco Overseas (Nig.) Unlimited V. Pedmar (Nig) Ltd (2020) 13 NWLR (pt 785)** to the effect that judgment interest on this nature is usually awarded to the successful litigant at the end of the trial.

The counsel submitted that facts not pleaded go to no issue and the defendant raised issues that he has not pleaded, and he cited the cases of **Salami V. Oke (1987) 4 NWLR (pt 63) 1; Ezewani V. Onwora (1989) 4 NWLR (pt 33) 27; and Soaipo V. Leminkaine (1985) 2 NWLR (pt 8) p. 547**.

On the issue No. 2, the counsel submitted that the defendant has to be served with 7 days statutory notice of owner's intention to apply to recover possession of the premises, and thereafter the plaintiff filed an action, and he

cited the case of **Ayinke Shares ltd. V. Adebogun (2008) 10 NWLR (pt 1096) 612.**

He argued that the tenancy of the defendant has long been determined by the letter written to him in 2017.

On the issue No. 3, the counsel submitted that the burden of proof lies on that person who would fail if no evidence at all were not given, and it lies on the party against whom the judgment of the court would be given if no evidence were produced on either side regard being had to any presumption that may arise on the pleadings, and he referred to sections 131, 132 and 133 of the Evidence Act, and cited the case of **Eghareva V. Osagie (2009) 18 NWLR (pt 1173) 299 at 315.**

The counsel have a recounts of the claim of the claimant and the evidence, and also submitted that it is a trite law that where the tenant (defendant) disputes the outstanding rent owed by him, the law is that it behooves upon the tenant to tender credible evidence to prove same, and he cited the case of **Arigbabu V. Oyenuga (2019) LPELR – 47381.** The counsel urged the court to disregard the submission of the counsel to the defendant in paragraphs 4.4 and 4:11 of the final address to the extent that the defendant cannot approbate and reprobate.

The counsel also urged the court to discountenance the AMAC Tenement receipt of N50,000.00 tendered in evidence by the defendant which has no bearing with the rent owed by the defendant as the defendant covenanted to pay charges as the lease agreement as per paragraphs 2(b) (c) of the lease agreement.

The counsel also urged the court to disregard the submission of the counsel in paragraph 8 of the statement of defence and paragraph 5 of the witness statement on oath due to the fact that fire engulfed the house as the

defendant alleged that he has spent N3,000,000.00 while in his letter dated 5th January, 2012 the defendant alleged that he has spent N7,000,000.00 to repair the alleged fire.

The counsel submitted that the defendant's claim of N3,000,000.00 is therefore frivolous, and he referred to section 15 of the Recovery of Premises Act Abuja, and urged the court to resolve relief (9) in favour of the plaintiff.

The counsel argued that the court has the power to award 10% judgment interest rate on the said debt sum from the date of the judgment until when it is liquidated, and he cited the case of **Petgas Res. Ltd V. Mbanefo (2007) 6 NWLR (pt 103) 345 at 559**, and urged the court to hold that the plaintiff is entitled to post judgment interest.

Thus, I adopt the issues for determination as already formulated by the counsel to the plaintiff as follows:

1. **Whether this Honourable Court has the jurisdiction to hear and determine this suit from the totality of the evidence before the court?**
2. **Whether the plaintiff has established his case, and is entitled to relief sought?**

It is at this juncture that I have to evaluate the evidence with a view to ascribe probative value to the one that is credible. See the case of **Fagbenro V. Arobadi (2006) All FWLR (pt 310) p. 1575 (SC).**

In the course of cross-examination, the PW1 told the court that according to terms of the lease agreement, the tenancy was to commenced from 18th December, 2010 to 17th December, 2011, and the defendant paid the sum of N3,800,000.00.

When asked whether the defendant renewed its tenancy after the expiration of the one tenancy for the period of 2012 to 2013, the PW1 answered in the affirmative because of the letter dated the 11th October 2011 the

claimant wrote a letter asking the defendant to renew and the rent was increased from N3,800,000.00 to N5,000,000.00.

The PW1 was asked whether in the letter dated the 10th day of October, 2011 that there is a clause or sentence that a new lease will be on the certain terms and conditions subject to contract, and the PW1 did not answer that question.

The PW1 was asked in a letter dated 17th November, 2011 the defendant did indicate that he did not agree with the payment of N5,000,000.00 as rent, and the PW1 answered that the defendant asked for a time to pay for the subsequent year 2011 to 2012, but for the 2012 to 2013, the defendant paid N5,000,000.00.

The PW1 was asked to look for the letter dated 5th day of January, 2012 which the defendant said that he would not be able to the sum of N5,000,000.00.

Before giving answer to the question, the counsel to the clamant raised an objection that the letter was not before the court, and the court ruled that the copy of the letter was pleaded. However, the PW1 told the court that he was in receipt of that letter and that the defendant paid N5,000,000.00 for the year 2012 to 2013.

The PW1 was also asked whether there is the letter of 23rd November, 2011 the defendant did not insist in paying N3,800,000.00 and not N5,000,000.00, as rent for the year 2012 to 2013; and after that the defendant paid N4,500,000.00 between 2014 to 2018 and N1,000,000.00 in 2019.

The PW1 was also asked whether in the letter dated 7th December, 2011 the claimant did agree to accept N3,800,000.00 as rent, and he answered that he agreed that he wrote the letter and it was agreed to accept N3,800,000.00 for year 2012.

The PW1 was also asked whether the defendant did not write a letter complaining of numerous problems in the house which cost the defendant some money and the PW1answered in the affirmative.

The PW1 was asked whether the defendant informed the claimant of the fire outbreak in the house, and the PW1 told the court that the defendant called and told him of the fire outbreak but the defendant did not show him, and that the defendant did not show him the affected area that gulfed with fire.

The PW1 was asked whether in the lease agreement there was a clause for insurance and the PW1 answered in the affirmative and told the court that the defendant did not show the claimant the affected area that burnt, and that since the defendant entered the house, he did not allow the claimant access to the house.

The PW1 was asked whether there was any improvement on the house before the increase of the rent, and the PW1 told the court that the person that was in the house was paying N5,000,000.00.

The PW1 told the court he would not know whether his lawyer had served any notice apart 7 days notice of owner's intention to recover the premises.

The PW1 was asked whether he did not calculate properly and the PW1 answered the calculation was based on N5,000,000.00 rent.

Now, throughout the question and answers series during cross examination, there is no where the PW1 was challenged or discredited and therefore the court has no option than to accept the evidence of the PW1 as true and to act upon it. See the case of **Gana V. FRN (2019) All FWLR (pt 1012) p. 728(SC)** I therefore accept the evidence of the PW1.

The court reluctantly admitted the Photostat copy of the notice of owner's intention to recover possession EXH. 'AB 1' judgment whether it can ascribe probative value to it.

The PW2 during cross-examination, told the court that he was served the 7 days notice of owner's intention to recover possession by pasting due to the absence of the defendant, and there was a certificate of service.

The PW2 told the court that he did not have an order of court to serve by substituted means, and that he is a bailiff attached to Magistrate Court 1 of the FCT Judiciary.

The PW2 was not challenged during cross-examination, and the evidence is worthy of acceptance as true. See the case of **Gana V. FRN (supra).**

The DW1 tendered a letter dated the 10th day of October, 2011 and was admitted as EXH. 'D1'.

The letter dated 7th December, 2011 was also admitted in evidence and marked as EXH. 'D2'.

The DW1 tendered a letter dated the 17th November, 2011 and was marked as EXH. 'D3'.

The DW1 also tendered a letter dated the 5th day of January, 2012 and was admitted and marked as EXH. 'D4'.

The transaction explorer was admitted as EXH. 'D5'.

The acknowledged copy of the receipt bearing the name of the claimant was marked as EXH. 'D6'.

The transaction explorer was also admitted as EXH. 'D7'.

The transaction explorer with No. 01253318 was also admitted as EXH. 'D8'.

The transaction explorer with No. DC 61859 was admitted as EXH. 'D9'.

The standard chartered Bank cheque was also admitted and marked as EXH. 'D10'.

The letter dated the 23rd November, 2011 was admitted and marked as EXH. 'D11'.

The receipt of payment of tenement rate issued by AMAC dated the 18th day of August, 2016 was admitted in evidence and marked as EXH. 'D12'.

The letter from Abuja Municipal Area Council dated the 18th of August, 2016 was also admitted and marked as EXH. 'D13'.

The cheque, being photocopy issued in the name of the plaintiff dated 25th March, 2019 was admitted and marked as EXH. 'D14'.

The DW1 during cross examination was asked to read paragraph 2(b) of the Tenancy Agreement.

The DW1 was asked whether there is any agreement for the claimant to offset any payment of bill, and the DW1 answered that he has written to the claimant that since the house gulfed with fire any electrical problem and other defects and all expenses incurred by the defendant will be deducted from the rent and the claimant did not reply. The DW1 told the court that the notification he wrote served as an agreement especially when there is no response to the letter.

The DW1 was asked whether he has forwarded any bill to the claimant in any of the documents tendered before the court, and the DW1 told the court that to his recollection the bill is expended and has been stated in his statement, and at last the DW1 accepted that the documents are on the table of the counsel to the claimant.

The DW1 told the court that as at 2022, he is in that property and he entered in 2010.

The DW1 told the court that he could not recollect when he paid rent in 2010.

The DW1 was also asked that he did renewed his rent after 2010, and he answered that is not necessary.

The DW1 told the court that he did not agree to consider the review of rent for 2012 and 2013 tenancy year, and he answered that it is not correct.

The DW1 was asked whether the cheque dated 03/11/2017 showing the payment of N2,000,000.00 was an evidence of payment to the claimant, and the DW1 answered that it is not so.

The DW1 was asked that he made payment of N5,000,000.00 for rent of 2012 to 2013, and the DW1 answered that EXH. 'D9' was meant to defray the previous outstanding payment.

The DW1 was asked whether as of 2012 to 2013, he can tell the court how much he was owing that made him to pay N5,000,000.00 and he answered that he could not tell what he owed since the rent was erroneously calculated. The DW1 was also asked whether in 2011 to 2012 he made payment of N3,800,000.00 for rent, and the DW1 answered that he could not remember the dates of the payment he made.

The DW1 was asked whether after 2013 to 2014, all payments he made were in piece meal, and he answered that all payments he made are in the court.

The DW1 was asked to look at EXH. 'D14' and tell the court how much he has paid, and he answered that he paid N1,000,000.00 and EXH. 'D10' he told the court that he paid N2,000,000.00 and in EXH. 'D9' he paid the sum of N5,000,000.00

Thus, from the questions and answers series during cross examination, the evidence of the DW1 was seriously challenged and discredited, and to my mind, the evidence

lacks probative value and is not worthy of acceptance, and it cannot be relied upon, and is hereby rejected.

Let me examine the documents so far tendered by both parties.

The claimant tendered EXH. 'A1' which is the lease agreement between the landlord and the tenant. By paragraph 1, it reads:

> **In consideration of the rent hereinafter reserved and the lessee's covenant herein reserved and contained, the lessor hereby demise and grant unto the lessee the whole house including its appurtenances situate, lying and known as 56, Constitution Avenue, Gaduwa, Abuja, Nigeria to hold the same unto the lessee from the 18th day of December, 2010 for the term of one year and paying during the said term annual rent of N3,800,000.00 (Three Million, Eight Hundred Thousand Naira) clear of all deductions whatsoever and the sum of N3,800,000.00 (Three Million, Eight Hundred Thousand Naira) being rent for the one year ending on the 17th day of December, 2011 having been paid in advance before the execution of these presents (the receipt whereof the lessor hereby acknowledges).**

By the above paragraph, it can be inferred that the tenancy was for one year 2010 to 2011 at the annual rent of N3,800,000.00 which was paid to the claimant and the claimant acknowledged the receipt, and it would therefore be inferred that the tenancy agreement was for 2010 to 2011 only.

In paragraph 2(d) reads:

> **The lessee hereby covenants with the lessor as follows:**
>
> **(d) not to do or permit or suffer to be done in or upon the premises and waste spoil or destruction and not without the consent of the lessor to make any alteration or additions or any improvements whatsoever structural or otherwise in the premises or any part thereof either internally or externally or to the electrical installations.**

So, the area of concern to this court is the expression "without" the consent of the lessor to make any alteration or additions or improvements whatsoever structural or otherwise in the premises"

The question that agitates in the mind of the court is: with whose consent the landlord used to put the house to its proper shape when it was alleged to have been gulfed by fire? To my mind, the landlord did not seek for the consent of the claimant, and he is on the frolic of his own.

In paragraph 2(e) reads:

> **To permit the lessor and its agent with or without workmen and others at reasonable times to enter upon and examine the condition of the demised premises:**

By the above paragraph, the claimant was to be allowed by the defendant to enter into the premises and examine the condition of the demised premises, and it if evident that the defendant did not allow the claimant to inspect the property since the occupation, even with a view to inspect the alleged burning of the property. Now, how can the tenant claim that the house gulfed by fire as an excuse to non payment of the rent alleging that he has

incurred an expenses. The defendant could not adduced any evidence to show that he sought for the consent of the claimant and he was given, and therefore the claim that he incurred an expenses is of no moment, and I so hold.

So, the covenant in paragraph 3(a) of the lease agreement is of no moment and the claimant could not be made to pay the bills of expenses the defendant incurred in putting the property back to its shape as there is no consent first had and obtained from the claimant.

In paragraph 4(ii) it reads:

> **That if at the expiration of the term hereby granted the lessee shall be desirous of continuing in occupation of the demised premises for a further term of two years. It shall give to the lessor at least three(3) months notice in writing of such desire then in such case the lessor shall grant at the expense of the lessee a new lease of the premises hereby demised for the further term of two years on terms and conditions to be agreed by both parties.**

In the event that the terms and conditions are not agreed by both parties, this option to renew will automatically abate and there will be no need to meet to an arbitrator.

By the above quoted paragraph, it can be inferred that at the expiration of the term of tenancy 2011 to 2012, the defendant had the right to renew after giving three months notice to the claimant and for terms and conditions to be agreed by the parties. In the instant case, bind by the letters exchanged, the parties did not agree as to the terms and the conditions, particularly as to what was the rent to be paid. And in the other part of the paragraph, since the parties have not agreed as to the terms and conditions,

then the option to renew automatically abate, and there will be no need to refer to an arbitrator. By the above quoted paragraph the defendant did not write to the claimant until the claimant wrote to the defendant, and there is no agreement as to payment of rent when the defendant agreed to pay the previous rent of N3,800,000.00 (Three Million, Eight Hundred Thousand Naira) and the claimant asked for N5,000,000.00 (Five Million Naira) as rent and therefore the option to renew by the defendant abates, and I therefore so hold. See the case of **Odutola V. Papersack Nig. Ltd (2007) All FWLR (pt 350) p. 1271 at 1234, paras. B-D** where the Supreme Court held that an act of a new tenancy is a conscious and specific one which must be subject of bilateral conduct on the part of the landlord and tenant. As a matter of law, the parties must clearly and unequivocally express their willingness to enter into new tenancy at the termination of the old one. As a specific act emanating from the landlord and the tenant. It cannot be subject of guess or speculation. An agreement or contract is a bilateral affair which needs the ad idem of the parties. Also there an agreement is intended to be made by several persons jointly, if any of those persons failed to enter into the agreement, there is no contract, and liability is incurred by such of them as have entered into the agreement.

In the instant suit, by the defendant's refusal to pay the sum of N5,000,000.00, he is liable to have entered into the agreement, and I so hold.

So, for the fact that the claimant did not reply to the letter of the defendant, this means, the rent stands at N5,000,000.00 and not N3,800,000.00, and I so hold.

EXH. 'A2' is a letter by the claimant demanding for the renewal at the rent of N5,000,000.00, and still then, the

defendant did not deem it appropriate to agree with the term of N5,000,000.00 rent.

EXH. 'A3' is another letter dated the 23rd November, 2013 by the claimant to the defendant demanding for the renewal at the rent of N5,000,000.00 and the defendant insisted that it must be N3,88,000.00. See the case of **Godwin V. Duro – Emmanuel (2017) All FWLR (p2 901) p. 761 at 773, paras. D – E** where the Court of Appeal, Lagos Division held that it is not a lease granted in perpetuity. It does not also impose to the landlord an obligation to renew an expired lease where the landlord does not wish to do so. In this instant suit, it is speculative for the defendant to assume that the claimant's silence is an acceptance for the payment of rent of N3,800,000.00, and I so hold.

EXH. 'A4' is another letter from the claimant dated the 12th October, 2015 demanding for the renewal of the rent at the rate of N5,000,000.00, and yet the defendant become adamant for three consecutive times the claimant was writing to the defendant for the renewal of the rent at the rate of N5,000,000.00 and the defendant is not willing to renew, yet he occupies the demised premises.

EXH. 'A5' is a letter from the claimant giving seven days to the defendant to pay all the outstanding rent to the claimant and defendant still did not take step to pay his indebtedness.

EXH. 'AB 1' is the notice of owner's intention to apply to the court to recover possession, which is a photocopy of the original. As at the time of tendering the photocopy, the defendant was silent, and it was only the court that ruled that it would decide whether to attach any weight to it. And the defendant in his final written address did not raise any objection for the admissibility of the document hence it was admitted. Attached of the notice is the original copy of

the certificate of service. See the case of **Mewakaya V. Ejiofor (2006) All FWLR (pt 326) p. 393 at p. 396, paras. D-E** where the Court held that where service of process of any process shall have been effected by a bailiff or other officers of court, a certificate of service signed by such bailiff or other officer shall on production, without proof of signature be prima facie evidence of service. In the instant suit, the production by the bailiff of the original copy of the certificate of service is a prima facie evidence of service. So the dispute by the defendant that it was not served on the defendant by substituted means of no moment and the argument of the defendant is discountenanced. Moreover, the argument of the counsel to the defendant that the court did not give order of substituted service hold no water, because section 28 of the Recovery of Premises act recognises service by substituted means, and I therefore so hold that at that time of service of the notice, the action to recover has not been commenced, let alone to pray to the court for the order granting leave for substituted service. Even as at that time it is usually the landlord that issue the notice and not the court. See the case of **Uhuangho V. Edegbe (2017) All FWLR (pt 907) p. 1794 at 1804, para. E** where the Court of Appeal, Benin Division held that a seven day notice of owner's intention to recover possession should be signed either by the owner of the premises or by the agent.

The defendant tendered the following documents:

EXH. 'D1' which is a letter written by the landlord to the defendant dated the 10th October, 2011 whereupon there was a demand for the renewal of the rent to N5,000,000.00.

EXH. 'D2' is a letter written by the landlord to the defendant whereas it is said "we are agreeable to your offer". The defendant argued that the words used indicate

that the offer has been accepted, and I bet to disagree with the counsel, this is because the word "agreeable" means "ready to agree or consent", but does not mean it is agreed, and I so hold. So the contention of the defendant is discountenanced.

EXH. 'D3' is a letter written by the solicitor to the defendant where upon it was indicated that the option to review the rent rate would be considered in the 2012/2013 tenancy year.

EXH. 'D4' is a letter written by the solicitor to the defendant to the claimant disagreeing with the unilateral increment of the rent to 5,000,000.00, and is dated 5th January, 2012. The defendant paid 3,800,000.00 through Diamond Bank Cheque attached for the year 2012.

EXH. 'D5' is a transaction explorer with No. 01239017 for the payment of N1,000,000.00 to the claimant through FCMB made on the 2nd April, 2019.

EXH. 'D6' is a First City Monument Bank photocopy of the cheque for the payment of N1,000,000,00 dated the 25th day of February, 2019.

EXH. 'D7' is a transaction explorer of the payment of N1,000,000.00 dated the 26th February, 2019.

EXH. 'D8' is another transaction explorer for the payment of N1, 000,000.00 dated the 6th January, 2018.

EXH. 'D9' is a transaction explorer for the payment of N5,000,000.00 dated the 3rd May, 2012.

EXH. D10' is a Standard Chartered Bank cheque for the payment of N2, 500,000.00 dated the 8th December, 2014.

EXH. 'D11' is a letter from the solicitor to the defendant to the claimant referring to a meeting between Femi Talabi and Mr. Bayo Karimu on the 18th November, 2011 where upon the defendant indicated that he would be renewing the rent at the old rate of N3,800,000.00 and the letter is

dated the 23rd November, 2011. The defendant also indicated its intention to negotiate rent increment in 2012/2013 tenancy year.

This was the money conceded by the claimant in the sum of N3,800,000.00 for the year 2011 to 2012 only.

EXH. 'D12' is a departmental receipt issued by AMAC for the payment of tenement rate in the sum of N50,000.00 dated the 25th August, 2016. This payment was made in reference to a clause in the lease Agreement whereupon the defendant agreed to pay all charges to be imposed on the demised premises, and I therefore so hold that it was the responsibility of the defendant to pay all charges imposed, and the claimant is not obligated to make refund all the expenses incurred by the defendant as charges.

EXH. 'D13' is a letter for the payment of N50,000.00 dated 18th August, 2016, this letter is in respect to the payment in EXH. 'D12'.

EXH. 'D14' is a photocopy of a cheque for the payment of N1,000,000.00 dated the 25th March 2019 issued to the claimant.

There is no evidence adduced showing that the these payments or monies were returned to the coppers of the defendant, however, in the course of the cross examination, the DW1 told the court he would not know the payments or monies were for what.

Assuming the payments made were for rent, these are piece meal payments instead of N5,000,000.00 rent, and assuming the claimant agreed as to the sum of N3,800,000.00 rent, the payments remain in piece meal, which is contrary to the terms in the lease agreement. Putting the whole payments made by the defendant to the claimant in piece meal will give the sum of N12,500,000.00 and certainly, the defendant is in arrears. See the case of

Anyafulu V. Agazie (2007) All FWLR (pt 344) p. 147 at p. 160, paras. A-B where the Court of Appeal, Enugu Division held that rent is always in arrears immediately after midnight of the day on which it is due. In the instant suit the defendant is in arrears of rent on the 17th December, of every year of the tenancy, and to this I so hold.

Based upon the above consideration, I therefore answer the issue No. 2, that the claimant has been able to proved his suit on preponderance of evidence and on the balance of probability to entitled him to the reliefs sought, and I therefore, so hold.

In giving an answer to issue No. 1, I dare to say that once an issue involves landlord and tenant and the complaint is about non payment of rent, it is the FCT High Court and Magistrate Courts that have the jurisdiction to entertain such actions. See section 2 of the Recovery of Premises Act (Abuja).

I also hold that the defendant is holding over the demised premises of the claimant up to 18th December, 2018 as claimed by the claimant. See the case of **Ekwegh V. Ike (2005) All FWLR (pt. 260) p. 159 at 164, paras. C-D,** where the Court of Appeal Enugu Division held that after the termination of the tenancy agreement, the occupation of the property in question amounts to holding over, and the claimant is entitled to mesne profit.

I so hold that the claimant is entitled to mesne profit. See the case of **African Petroleum Ltd V. Owodunmi (2004) All FWLR (pt 208) p. 783 at 800, Paras. A-B.**

An order is hereby given to the defendant to vacate the premises situate at 56, Constitution Avenue, Gaduwa Abuja and give possession to the claimant with immediate effect;

An order is given to the defendant to pay the sum of N5,000,000.00 being arrears of rent from 18th December, 2015 to 17th December, 2018 excluding the sum of N10,000,000.00 which was already paid by the defendant.

The defendant is hereby directed to pay the sum of N416,666.67 (Four Hundred and Sixteen Thousand, Six hundred and sixty-six Naira, Sixty-seven kobo per month as mesne profit from the 18th December, 2018 until possession is yielded.

The defendant is directed to pay all outstanding water and electricity bills, solid and liquid waste bills up to the time of vacation of the demised premises.

The defendant is directed to pay 10% post judgment interest from the date of this judgment until when the judgment sum is liquidated. See Order 39 Rule 4 of the Rules of this court.

The defendant is directed to pay the sum of N4,700.00 (Four Thousand, Seven Hundred Naira only as cost of litigation to the claimant.

Hon. Judge
Signed
23/09/2024

Appearances:

Julius Ifabiyi appeared as the claimant.

CT-REG: Have you invited the defendant to this case for judgment?

REG-CT: Yes, I did by phone call and text message.

Hon. Judge
Signed
23/09/2024

C.C. Owowo Esq appeared for the claimant.