IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON FRIDAY THE 24TH DAY OF MARCH, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV/234/2020

BETWEEN:

VMPD LIMITED ------- CLAIMANT

AND

CHARLES OKORONKWO ------- DEFENDANT

JUDGMENT

On the 12th day of February, 2021 the Claimant – VMPD Limited instituted this action against the Defendant – Charles Okoronkwo claiming the following:

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The main issue is that the Defendant refused to pay the agreed rent for the property in this Suit.

It is the story of the Claimant that the Defendant is his tenant having rented the Res – Plot 1256 Mohammed Isma Street, Asokoro District, FCT-Abuja – 5 Bedroom Semi-

detached duplex with Two (2) Bedroom Guest House and One (1) room Boys Quarters with the appurtenances for a period of One (1) year 23rd November, 2018 to 22nd November, 2019. But that after the expiration of the tenancy the Defendant failed to pay the rent or vacate the Res even after Notices to Quit and Notice of Landlord Intention to Recover Premises were served on him. The Claimant, in order to recover his premises asked his lawyer to write to the Defendant to that effect. Meetings were held to amicably resolve the issue but it all failed.

Meanwhile, the Claimant had previously authorized Chief Chase Ohaeri to be his Attorney via an Irrevocable Power of Attorney donated to the said Ohaeri. The Claimant also paid his Counsel for the legal professional service to be rendered for the course of the prosecution of the Suit. He had attached the evidence of the payment. The letter – Statutory Notices and the letter to issue Notices to the Defendant and the Tenancy Agreement all in the bid to establish and prove its case in this Suit. He had urged the Court to grant all the Reliefs sought.

On his own part, the Defendant did not deny being a tenant and being in arrears. He had filed a Preliminary Objection challenging the Suit of the Claimant in that it is incompetent and that the Writ was not instituted following the due procedure permitted by law. Again, that the Statutory Notices were not duly served on him or were improperly served on him. But this Court in a well considered Ruling had dismissed the Preliminary

Objection. This Court deems as if the said Ruling is hereunder set out seriatim. Hence, it is part of this Judgment and all issues already determined in it shall not be determined again in this Judgment.

The Defendant had basically stated in his Statement of Defence and through his Witness that the Writ was signed by unidentical person – Jimoh Musa & Co. and as such the whole Suit is incompetent. He had also stated that the issue between him and the Claimant was not on the issue of Rent but on the money he expected on repairs work carried out in the Res which ought to be paid by the Claimant or form part of the Rent. He denied ever having any meeting for amicable resolution of the issue in dispute and ever being a part of the Memorandum of Understanding. He had urged the Court to dismiss the Suit for being incompetent.

Both parties called one Witness each who testified on their behalf. Both tendered documents for and against respectively.

On their part, the Defendant filed its Final Written Address on the 27th September, 2022. In it he raised 2 Issues for determination which are:

he submitted that Claimant failed to prove the legal status or capacity to bring this Suit and that it has consequences on the jurisdiction of the Court to entertain the Suit and grant its claims. That the Claimant did not give evidence as to the legal status or capacity of the Claimant. Though the Defendant conceded to the averment in paragraph 1 of the Amended Statement of Claim in which the Claimant described itself as a Limited Liability Company registered with the CAC with address at House No. 32, Second Avenue, Festac. That there was no evidence to back up the capacity of the Claimant both in the Statement on Oath or Additional Witness Statement on Oath filed by the Claimant. They relied on the cases:

Where the back talked about a Defendant abandoning their Defence by failing to appear in Court to adopt his Oath.

That the Claimant did not give any evidence as to its legal status or capacity by not attaching its Certificate of Incorporation. They referred to the case of:

That the Claimant's failure to establish its legal capacity impinges on the jurisdiction of the Court to entertain the Suit. That the Court cannot speculate on that fact. They referred to the cases of:

He urged Court to resolve Issue No. 1 in his favour and hold that the Claimant's Suit is incompetent.

– whether the Claimant proved the Reliefs sought to be entitled to the grant of the Reliefs, the Defendant submitted that the Claimant has not proved his claim and does not deserve the grant of his Reliefs.

That the Issue of service of the Owners Intention to Recover Premises which is statutory cannot be dispersed with though the Court had in its Ruling considered that fact. He referred to the provision of

applicable to the FCT.

That the Claimant did not prove the service of the Landlord Intention to Recover the Premises – 7 days Notice. That the PW1 is agent of the Claimant and appointed by the Claimant to manage the Res as shown in the Power of Attorney of 25th July, 2017. That his

testimony that the Notice was served by another person – Zenas. That the person who served the Notice was not called as a Witness and as such the PW1 evidence is a hearsay evidence. That it is only after such Notice has been served that the Claimant can say that the Defendant has refused or neglected or ignored to quit and deliver up the Res. He referred to the case of:

That even in the recent case of:

The Supreme Court did not disperse with the statutory Notices to Quit. That the Claimant did not fulfill that obligation.

On payment of

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arrears of Rent from 23rd November, 2019 to 12th February, 2020, the Defendant submitted that the amount was not justified as the Rent was

= per annum and that the Claimant did not give evidence as to how the said amount was arrived at as Rent for that period where it was clear that the Rent expired on the 23rd November, 2019. That the Defendant is not supposed to pay Rent till 2020 as claimed. He urged the Court not to grant the Relief.

On Mesne Profit of
= per month till Judgment is delivered and executed, the Defendant submitted that there is no evidence as to how an annual Rent of
= translates to
= per month as there are 12 months in the year. That the claim is arbitrarily and not proved.

On the claim of Interest at the prevailing commercial Bank rate and on 10% per annum respectively as contained in Reliefs (iv) & (v), he submitted that no evidence was laid on what the prevailing rate is and the Claimant did not plead that in this case. That the Court cannot award interest not proven.

On the cost of the Suit, he submitted that it is a special damage which was never pleaded and strictly proved in evidence. No receipt was issued to that effect or tendered before the Court. He submitted that such claim had been judged outlandish and no more grantable. He referred to the case of:

Where the Court held that the legal cost is not part of the cause of action of the Claimant and therefore cannot be granted. That the cause of action for Recovery of Premises and legal cost was not part of it. He urged Court not to grant it.

On the Defendant putting the Res in a tenable and habitable condition, the Defendant submitted that the Claimant did not plead the condition of the house when the Defendant became the tenant therein. That the house was not in tenable condition when the Defendant moved into same. That the Defendant refurbished the Res with the contemplation that the monies expended in the renovation will form part of subsequent rent. That there is no basis for this claim. That Court does not grant unproved damages. He referred to the case of:

He urged Court to dismiss the Suit as the Suit is incompetent, as the Claimant failed to prove his legal capacity to maintain a Suit and as the Claimant has failed to prove his Reliefs. They urged Court to either strike out the Suit or to dismiss same for lacking in merit.

On its part, the Claimant in its Final Written Address responded to the issues raised in the Defendant's Final Written Address and formulated an Issue for determination which is:

He answered in the affirmative and stated that he has established its case on Balance of Probability and that it is

entitled to the Reliefs as sought. That there was a Tenancy Agreement between the parties and the Defendant failed to pay Rent after it expired and after he has promised orally to extend his stay in the premises and to renew the Rent. He defaulted in payment of his Rent. That the Defendant did not deny those facts. That he is only contending the issue of non-service of the Statutory Notices. That both parties are bound by the Terms of the Tenancy Agreement. They relied on the following cases:

That the testimony of the PW1 and the confirmation of DW1 shows that there was agreement between the parties. That the Statutory Notices were duly served on the Defendant by the Claimant's Solicitor who was authorized to do so as per the Claimant's letter to that effect. The tendered both evidence of the receipt of the Notices (acknowledgment) and the Letter of Authorization. That the issue of Notice to Quit is only necessary where the Tenancy is from term to term. But where as in this case

the term is fixed, the only Notice to be served is Owners Intention to Recover Premises. That the time the Tenancy will come to an end is well known by the Defendant. They relied on the cases of:

That the Claimant did not discuss of the Generator set as the Defendant alleged. That the Generator set is not part of the Tenancy Agreement and appurtenances in the Res.

That the allegation of purported repairs carried out by the Defendant is not true. That clearly state how and when and under what condition repairs can be carried out on demised premises for Defendant to be entitled to imbursement. That the Defendant had told Court that he did not have the consent of the Claimant before the purported repairs were carried out. He urged Court to discountenance the issue of repairs as it was done without the Claimant's knowledge and consent and was not substantiated. He urged the Court to hold that the Claimant is entitled to immediate possession of the Res having proven so.

On Arrears of Rent and Mesne Profit, the Claimant submitted that he is entitled to Mesne Profit from the 23rd of November, 2019 until vacant possession is delivered.

That he is therefore entitled to the Reliefs. That the One (1) year Rent had expired. That the Defendant did not pay any further Rent. He did not give up possession too. That since the Rent is unpaid and possession not delivered or yielded back, that the Claimant is entitled to the Relief of Arrears of Rent and Mesne Profit. That the Defendant ceased to be a tenant from 22nd November, 2019 when the fixed term granted to him expired. He referred to the cases of:

That the Defendant did not deny owing Rent. He urged the Court to grant the Claimant's 2nd & 3rd Reliefs as sought since the Claimant had established same with credible evidence. They relied on the case of:

On the 4th Relief, the Claimant Counsel submitted that the Claimant is entitled to award of interest on the Judgment sum since the Defendant refused and neglected to pay to pay the arrears of Rent which was due from 23rd November, 2019 to date as he is still in possession till date.

On award of cost, he submitted that it is at the discretion of Court for compensation of a successful party to the

extant of the expenses incurred by the party. He relied on the case of:

That the Claimant tendered the Receipt of Payment of Legal Fees to Jimoh Musa & Co. dated 25th August, 2020 evidencing the payment made by the Claimant to the Counsel. That the said Receipt was tendered as
That award of cost is desirable in this case. He urged the Court to award cost and grant their Reliefs as sought.

Upon receipt of the Claimant's Final Written Address the Defendant filed a Reply on Points of Law to the said Final Written Address. The said Reply is on Issue of Juristic Status of the Claimant. Legal existence of the party which bothers on technicality and on whether Pre-Judgment Interest is based on Court's discretion.

On Juristic Status, the Defendant replied that issues were joined on the corporate status of the Claimant and not on title of the ownership of the Res. That the challenge of the Claimant's corporate status or legal existence remain unanswered as there is no link between the Claimant juristic personality and his claim to the title of the Res. That the Defendant is right to have challenged jurisdictional title of the Claimant as he did. He referred to the case of:

They urged Court to declare
which the Claimant relied on as well as the case of:

relied on by the Claimant as same is not applicable in this case. They urged the Court to hold that the Defendant's challenge of the Claimant's juristic status is not challenged. He also referred to the case of:

On challenge which border on technicality, the Defendant replied that any threshold issue which borders on jurisdiction of the Court cannot be dismissed as technicality.

That legal existence of a party in a Suit is fundamental to dispensation of justice as justice is not dispensed on vacuum but only on parties who have capacity to approach the Court. They referred to the case of:

That issue of Legal Existence of the Claimant comes up in their pleading and in evidence of the parties. They urged Court to discountenance the cases relied on by the Claimant which include:

as the cases are not applicable.

On the Issue of award of Pre-Judgment Interest, the Defendant replied that such award of interest is never discretional as it is based on pleadings and evidence of the Claimant placed before the Court as contemplated and agreed upon by the parties. The referred to the case of:

That the Claimant did not lead fact or adduce evidence to that effect. He urged the Court to dismiss the case of the Claimant or strike it out as it failed to prove its legal capacity and prove the Seven (7) Reliefs sought in this case.

Having summarized the case of the Claimant and the submission of the Defendant as per their case and Defence respectively as well as the questions raised by them, it is the humble view of this Court and this Court holds that the jurisdiction of the Court was properly activated. The Claimant has proved its Reliefs as sought in this case. It has made out the issue of its capacity in which the Suit was brought or instituted before this Court. And he is entitled to the Reliefs sought.

This Court also holds that it is its humble view that the Claimant has successfully established its case on Balance of Probability and is therefore entitled to all the Reliefs sought in this case by both the testimony of its Witness and the documents they tendered in support of this case which were admitted in evidence as Exhibits.

To start with, there is no doubt that there was a Tenancy Agreement for a fixed term of One (1) year. The Defendant did not deny that fact. – parties are bound by their Agreement whether it hots or not. "Agreement is Agreement" says the wise one. This the Claimant established by tendering the Tenancy Agreement in which the terms and condition of the Tenancy were clearly spelt out. The Defendant did not challenge that document. The Defendant did not challenge that he is still in the Res or that he is in arrears of Rent and has not yielded possession or paid any other Rent ever since. Facts admitted need no further proof.

Before I go any further, this Court deem as if set here seriatim the Ruling of this Court delivered on _____ in which this Court exhaustively considered and determined the issue of jurisdiction of this Court to entertain the issues in this case as raised therein in the Preliminary Objection filed by the Defendant. That being the case, the Court will not repeat or reconsider any of the issues in the said Ruling which is still binding on the party. Such Ruling is part of this Judgment. So this Court holds.

The Claimant proved that there was Tenancy Agreement. It stated the terms of the Agreement and the type of Tenancy it is which is for a fixed term. It proved that the Defendant was in default since 22nd November, 2019 and that he is still in possession till date. All these facts the Defendant did not deny. That is why this Court holds that the Claimant has established its case on Balance of Probability and he therefore deserves the Reliefs accordingly.

The Defendant had anchored on the issue of repairs which he allegedly claimed to have done. There is no document evidence to show that the parties ever agreed on the said repairs.

A look at the Lease Agreement of 23rd November, 2018 shows that VMPD is the Lessor. In paragraph 1 it was described as the owner of the Res.

Paragraph 1

In it, it was for One (1) year from 23rd November, 2018 to 22nd November, 2019 for Seven Million Naira which is the Rent for One year. The Defendant is responsible for maintenance of plumbing work and is prohibited from making any structural alterations on the Res without prior written consent of the Lessor.

The claim of the Defendant that he made repairs was not substantiated with any evidence. He did not show any evidence of getting the Lessor's written consent for the alleged repairs he carried out. To that, this Court holds that there were no such repairs and no agreement or consent for such alleged repairs. Besides, in the Agreement – , it listed all the things which the Lessor did or must have done which included repair of overhead collapsing tank, repair of required part work, repair of doors, restoration of NEPA (Electricity), 2 phase light points, change of bulbs inside the Res, repair of leaking roof, replacement of ceiling boards and general cleaning. The PW1 testified that these obligations were carried out before the Defendant entered, occupied and took possession of the Res. The Defendant did not deny

answer or oppose any proceed and to issue Notices as contained in paragraph 2 of the said Power of Attorney. See EXH 2 paragraph 2. Though the Power was revocable but there is no sign or evidence that such Power of Attorney was ever revoked before this action was instituted by the Claimant.

A closer look at the Notices served showed that the Claimant through its lawyer's letter and the Affidavit of the District Court's Bailiff as well as the picture so attached and tendered shows that the Defendant was personally served the Notice of the Landlord Intention to Recover Premises dated 13th February, 2020 on the same day 13th February, 2020 at the Res. The Defendant did not deny that fact. He only denied that the Claimant did not serve him the Quit Notice personally. The Claimant attached the picture showing that the Notice was actually pasted at the gate of the Res. The Defendant did not challenge that fact. He only challenged that the Notices were not served as statutorily required. But the question is, should the Claimant be denied his Rent and be estopped from recovering his premises just because a Statutory Notice served on a tenant who had not denied holding over the Res, who had also acknowledged the fact that the Rent has expired and who had not yield up the Res or paid the Rent till date even after the Undertaking he had made to the Claimant promising to pay up all outstanding Rent since 31st July, 2020. In the Letter of Undertaking he wrote thus:

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The above is clear as summer day light and need no judicial torch to see it clearly. It is self explanatory as it were.

The same Letter of Undertaking states in paragraphs 2 thus:

The above is clear too.

From the above, the Defendant had promised to extend his tenancy. That action is in line with the Terms and Condition of the Tenancy Agreement. There is no evidence to show that the Claimant declined that fact or offer. Hence, the claim of another year Rent by the Claimant is justified. So also the claim of Mesne Profit by the Claimant is equally justified.

Also, the Claimant had tendered Letter of Authority dated 25th August, 2020 authorizing the Jimoh Musa & Co. as its Legal Attorney.

Paragraph 2 (1)

The above authorization is

The authority donated to Jimoh Musa and Co. is clear and does not need power of sale. It also last as long as the Suit lasts.

The Claimant agreed to pay the said Jimoh Musa and Co. all its legal fees. He attached the evidence of payment of the fees paid to Jimoh Musa and Co. – Receipt of Payment of ═ on 23rd August, 2020 25 days after the Undertaking by the Defendant to pay the outstanding balance of Rent – 31st July, 2020. The above was attached by the Claimant to justify the Relief on award of cost. But the question is, how justifiable is the award of cost incurred by a party especially the Claimant bearing in mind that the claim of the Claimant is based on cause of action which are usually the wrong caused the Claimant by the Defendant which the Claimant is seeking redress against. Should the Court award such cost against the Defendant as part of Reliefs of the Claimant? If so, is it justified in law?

It is the humble view of this Court that in law there is no reason for Court to award cost of seeking redress in Court

by Claimant against the Defendant. There is no such thing provided in the litigation world and in law to justify payment of cost incurred by the Claimant. Such cost only exists in Arbitration Proceeding. There is no reasonableness in paying a man the cost incurred for pursuing money owed to him by a tenant who had refused to pay the expired Rent and/or yield up possession. Money/cost expended in pursuing such cause/litigation is not part of the redress or wrong done by the Defendant which the Claimant wants to correct or recover as the case may be. Cost of litigation or of the Suit is cost invested/expended in course of seeking redress. The Defendant should not be punished by award of such cost of litigation because it is not part of the Cause of Action. If the Claimant is desirous of claiming such cost, it should have resorted to using Arbitration Proceeding to settle the dispute between it and the Defendant and not resorting to litigation.

The cost of prosecution of a case has no place legally speaking in litigation. It can only exist in Arbitration Proceeding. The claim/Relief of cost of prosecuting the case is NOT granted.

But to the Issues in the main as it pertains to improper or non Notification of the Statutory Notices. It is not in doubt that the Defendant personally acknowledged the 7 days Notice of Landlord Intention to Recover Premises going by the evidence of acknowledgement of receipt of same by the Defendant on the 13th of July, 2020. That fact cannot be

denied. The letters of 4th February, 2020 and 13th February, 2020 are clear on that. It shows that the writer of the letter – Zenas Consult who served the letter which was signed by Ike Nzekwe of Ikenzekwe & Associates has the authority of the Claimant to issue the Notice. The letter states in paragraph 1 of both letters thus:

The letter is self explanatory and gives the Defendant up till 21st February, 2020 to give up possession and hand over the keys of the premises. But he did not do so though he received the said letter on the same 13th February, 2020 some weeks after he wrote an Undertaking to pay the Rent. He never gave reason that he will not yield up possession or pay Rent or that he is staying over because of the cost he incurred in the alleged repairs. He never said that he will use the amount/cost of the repair in place of the Rent due and payable. He never stated where he agreed with the landlord to do so. All those facts were not substantiated by him. Hence, he had failed to keep his own side of the Agreement and as such the landlord is right to seek possession and payment of both Rent and Mesne Profit. So this Court holds.

The Defendant did not challenge the case of the Claimant. The only issue on improper or non-service of Statutory Notices has been taken care of in the case of:

Yes, in as much as the Court is not against proper service of Statutory Notice in this case, the Defendant was properly served the Landlord Intention to Recover Possession of Premises. He equally personally accepted that Notice and acknowledged same as shown in the testimony of the PW1 & DW1 and in the Notice itself.

Should a landlord loose his rent and possession of his house from a recalcitrant tenant who knows that the rent has expired, that he is in arrears of rent and had in an Undertaking made on the 31st day of July, 2020 even before the Notice was given and almost nine months after the expiration of the tenancy and still counting just because the same landlord who had given notification in writing to the same tenant of his intention to recover possession had not personally served the Defendant the said Notice?

Of course not, God forbid that a man who had invested his life savings in constructing a house in order to be recouping all he had expended on the construction and has investment which he hopefully believe to be a fall-back should loose all that because of mere alleged improper

service of Notice which was not even substantiated. Every person is entitled to fruit of its labour says the book of the Bible and as the saying goes. The landlord had labored to build the Res. He is entitled to enjoy the fruit of that labour. He need not expend energy and extra cost in order to enjoy the fruit of the investment had made in building and renting out the Res. No reasonable man will be happy to spend money in building a house for rent and the time to recover his rent which is not denied and to recover possession of the premises which was rented out on a fixed term which had expired and in which the Defendant had promised to renew and to continue as tenant after the expiration of the first term through the letter of Undertaking written by the same tenant and such man is denied same.

Strictly speaking from all indication, the landlord need not even to give the Defendant/tenant any Notice to quit since he had written him about his intention to recover possession. After all, the tenant knows that the Tenancy had expired.

Most importantly, the Bailiff of the Court in the Affidavit tendered shows that the 7 days Notice was served. That 7 days Notice suffices because in it the Claimant/landlord informed the Defendant of his intention to use the premises for his own personal use.

No landlord need to take permission from any tenant before he can use his property as he likes. The notification

by the landlord in this regard is proper contrary to the submission of the Defendant. So this Court holds.

All in all, and in the final analysis, this Writ was filed on the 3rd of September, 2020. The notification was served on 13th February, 2020 i.e. seven (7) months after the service of the said Notice to Recover Possession was served on the Defendant. It is clear that from that angle there was due notification for more than the 30 days as contained in the Tenancy Agreement and in the Statutes. From all indication there was proper service of the Notice on the Defendant both statutorily and otherwise. So this Court holds.

The alleged improper or non-service of the Statutory Notice by the Defendant is not strong point to deny the Claimant the Reliefs, after all, the said issue was not substantiated by the Defendant. This Court holds that the service of the Statutory Notices on the Defendant were properly done.

There is no such thing as Jimoh Musa & Co. being an unidentified person as the Defendant laboriously claimed. A duly registered member of the Bar, a Supreme Court of Nigeria Attorney and a duly registered Law Firm at the CAC cannot be said to be unidentified person. The Defendant did not put before this Court any evidence to show that Jimoh Musa & Co. was not a registered business name at the CAC. The Claimant Counsel has the logo or the stamp of the said Jimoh Musa & Co. in the Writ filed on the 3rd of September, 2020. The said Jimoh

Musa & Co. has an address too. The Amended Writ was signed by Jimoh Dayo Musa of the same Jimoh Musa & Co. as shown in the original copy of the Amended Writ filed on the 12th day of February, 2021. It also has the stamp of Jimoh D. Musa with the NBA Number in the green stamp. The Statement of Claim was also signed by the same Jimoh Musa so also the List of Annexures, List of Witnesses and Certificate of Pre-action Counseling. So also the Writ of 3rd September, 2020 which was later amended was equally signed by the same Jimoh Musa as Counsel to the Claimant. So also the Pre-action Certificate, List of Witness to and List of Annexures.

Besides, it is a Chamber that files Process and each Chamber can be represented by any member of the Chamber who is qualified as a lawyer. Contrary to the statement by the Defendant Counsel, the Statement of Claim and the Writ was signed by Jimoh Dayo Musa of Jimoh Musa & Co. So also the Amended Writ and Statement of Claim.

The Court holds that Jimoh Musa & Co. is known, identified by its NBA stamp, its address and as Counsel for the Claimant as seen in the documents they filed in this case. The Court refers to its previous Ruling.

As stated severally, the Claimant had made out the capacity in which it instituted this action. It has proved its case through the testimony of their sole Witness and the cogent documentary evidence tendered by their Witness which was not in any way challenged by the Defendant

save the unsubstantiated allegation of non-service of Statutory Notices.

From all indication, the Claimant is entitled to its Reliefs having established and proved its case as detailedly considered and determined above.

This Court therefore enters Judgment in its favour and hereby grants its Reliefs to wit:

(1) **Reliefs 1, 2 and 3 granted as prayed.**

(2) **Relief 4 NOT granted.**

(3) **Relief 6 NOT granted.**

(4) **Relief 7 granted as prayed.**

(5) **The Defendant to pay to the Claimant 4% per annum interest on the Judgment sum from date of Judgment until the final liquidation.**

K.N. OGBONNAYA

HON. JUDGE