IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON FRIDAY 3RD NOVEMBER, 2023
BEFORE HON. JUSTICE NJIDEKA K. NWOSU-IHEME

SUIT NO:FCT/HC/CV/4063/2023

BETWEEN:

MABON ESTATES LIMITED — **CLAIMANT**

AND

1. **AONDOVER INVESTMENTS LIMITED**
   MRS. ROSEMARY URUSULA NKU
   a.k.a. ROSEMARY OSULA MKU-ATU
   a.k.a. ROSULA MKU-ATU
   a.k.a. ROSEMARY U. OSULA
   a.k.a. ROSEMARY OSULA-MKU)
2. **MR. LEWIS OSI INNIH**

} **DEFENDANTS**

JUDGMENT

The Claimant instituted this suit via a writ of summons dated the 26thday of April, 2023. The pleadings in this case are: [i] the claimant's statement of claim filed on 26/4/2023; [ii] the defendants' statement of defence filed on 13/6/2023; claimant in its statement of claim is seeking the following reliefs against the defendants jointly and severally;

a. AN ORDER of this Honourable Court granting vacant possession to the Claimant over the six-bedroom duplex with all the appurtenances lying and situate at No. 53 Usuma Street, Maitama, FCT, Abuja currently being held over by the Defendants.

b. AN ORDER directing the Defendants to pay the sum of ₦35,000,000.00 (Thirty-Five Million Naira only) representing arrears of rent for the period 28th July 2020 to 27th July, 2021 and 28th July 2021 to 27th July, 2022.

c. AN ORDER directing the Defendants to pay mesne profits assessed at the sum of N2, 875,000 (Two Million, Eight Hundred and Seventy-Five Thousand Naira only) per month from 1st June, 2022 till judgment is delivered in this suit and thereafter until the Defendants relinquish possession.

d. 10% interest on the judgment sum from the date of delivery of judgment until the entire judgment sum is fully liquidated.

e. The sum of ₦1,000,000.00 (One Million Naira only) as cost of this action.

f. And for such further or other orders as this Honourable Court may deem fit to make in the circumstance.

At the trial, Enoch Gyas, Estate Manager of claimant, testified as PW1. He adopted his statement on oath filed on 26/4/2023, PW1 tendered Exhibits P1, P5, P6,P7, P8, P9, P10, P12 & P13.

Lewis Innih, the 3rd defendant testified as DW1 for the defendants. He adopted his statement on oath filed on 13/6/2023. During cross examination of the DW1 by B. L. Tebira, Exhibits D1 and D2 were tendered through him.

Evidence of PW1 – Enoch Gyas:

In his statement on oath filed on 26/4/2023, the PW1 stated that the property belongs to his employer; the claimant and he knew the 1st defendant a limited liability company, the 2nd defendant as the alleged managing director of the 1st defendant who presented herself at the beginning of negotiations as the Chief Executive and Managing Director of the defendant but was never seen again after taking possession of the property. He knew the 3rd defendant as an estate surveyor and valuer who also held himself out as the Managing Director and legal representative of the 1st defendant, signed letters and executed agreements as the MD/legal representative of the 1st defendant. That apart from using the demised premises for the business of the 1st defendant, the 2nd defendant also used the demised premises as her own personal residence with domestic servants and other personal staff of the 2nd defendant fully resident in the premises. That sometime in June, 2016, the 2nd and 3rd defendants while introducing themselves as the alter ego of the 1st defendant using the name

AONODODER INVESTMENT LIMITED expressed interest in leasing the Claimant's property after inspecting the property after which claimant issued Exhibit P1. The Defendants accepted the terms of the letter dated 9th June, 2016 and paid the first year rent of ₦30,000,000.00 covering the period 28th July 2016 – 27th July 2017 and was let into possession of the property as AONDOVER INVESTMENTS LIMITED which was the name the defendants led the claimant to believe were the substantive tenants the claimant would be dealing with Exhibit P13.

That after being let into possession, the defendants became hostile and refused to execute the tenancy agreement or acknowledge any form of correspondence with the claimant.

The defendant's tenancy expired on 28th July 2017 and fell into arrears of rent for the following periods;

a. 28th July 2017 - 27th July 2018.
b. 28th July 2018 - 27th July 2019, and
c. 28th July 2019 - 27th July 2020.

As at July 2020 the defendants were in arrears of rent in the sum of N90,000,000.00 (Ninety Million Naira only).

That due to defendants hostility, claimant initiated court proceedings seeking to recover arrears of rent and delivery of vacant possession in CV/3303/2020 between MABON ESTATES LIMITED v. AONDOVER INVESTMENTS LIMITED & Anor. Exhibit P5. During pendency of this suit the defendants solicitors at the time initiated out of court settlement and negotiations commenced. That while the said suit was still subsisting, the Defendants paid a cumulative sum of ₦70,000,000.00.

Parties executed a final out of court settlement dated 17th June 2022 Exhibit P6. That pursuant to the said out of court settlement, the 3rd defendant gave to the claimant 6 cheques with total value of ₦60,000,000.00 but only the cheques dated 5th, 15th and 25th July, 2022, and 5th August 2022 cleared representing the cumulative sum of ₦40,000,000.00 (Forty Million Naira only) paid by the defendants.

The two dishonouredcheques were admitted as Exhibit P7 and when the claimant informed the 3rd defendant of the fact that two of his cheques dated 15th and 25th August 2022 were returned by his bankers, 3rd defendant went ahead to pay the sum of ₦5,000,000.00 (Five Million Naira only) into the claimant's account on the 23rd day of November 2022 without informing the claimant.

The sum of ₦35,000,000.00 (Thirty-Five Million Naira only) out of the (Eighty Million Naira Only) is still outstanding as arrears of rent and remains unpaid based on the out of court settlement dated 17th June 2022.

The claimants unpaid rent represents unpaid rent for two years in arrears being ₦5,000,000.00 (Five Million Naira only) balance of rent for 28th July 2020 – 27th July 2021 and (Thirty Million Naira only) as unpaid rent for the period 28th July 2021 to 27th July, 2022. The Defendants have also not paid any rent for the period of 1st June, 2022 to 31st May, 2023 and has breached the out of court settlement dated 17th June, 2022 on several grounds.

That following the breach of the out of court settlement the tenancy became determined on the 27th July, 2022.

A notice to quit dated 21st November 2022 was issued with a firm undertaking that if the defendants deliver vacant possession of the property on or before 21st December 2022, the Claimant would waive any accrued rent from 28th July 2022 to 21st December 2022. Exhibit P8.

The defendants refused to acknowledge receipt of the said letter and respond to the request of the claimant.

That due to the intervening factors arising from the out of court settlement dated 17th June 2022, the claimant filed a notice of discontinuance through its lawyers at the time Exhibit P9.

That the claimant thereafter instructed it's new counsel, Sydney I. IbanichukaEsq of Ibanichuka&Ibanichuka to issue a fresh 7 day notice of owner's intention to recover possession and proceed to institute a suit in the event of a default by the defendants. This was issued through DHL courier service. The said mail was returned undelivered because; the security of the Defendants at the said

property informed the DHL delivery officials that there was no such person as the 3rd defendant residing at the premises.

Thereafter another 7 days' notice of owners intention to recover possession dated 1st April 2023 through DHL Courier service with the 2nd defendant directed at the 1st and 2nd defendant and same was acknowledged as delivered by the DHL Courier Service. Exhibit P10.

As the security of the Defendants did not acknowledge the 3rd defendant as a director of the 1st defendant and refused to receive any correspondence from the said DHL Courier Service. The claimant thereafter caused an investigation of the 1st defendant and 3rd defendant at the Corporate Affairs Commission, Abuja and it was revealed that there is no company registered in the Corporate Affairs Commission as AONDOVER INVESTMENTS LIMITED.

There was no company registered in the Corporate Affairs Commission as AONODODER INVESTMENT LIMTED which name was the name supplied by the defendants at the negotiations for the tenancy in June 2016.

That further investigations by the claimant through other sources revealed that AONDOVER INVESTMENTS LIMITED is a registered United Kingdom entity which was registered as a private limited company in September 15, 2017 after the expiration of the tenancy for the first year. That even though the 2nd defendant was a director with given names as MKU-ATU ROSULA as at the time of incorporation, the said MKU-ATU ROSULA purportedly resigned on 17th September 2021. The said United Kingdom entity, AONDOVER INVESTMENTS LIMITED has no subsidiary or affiliate with same name in Nigeria.

The 2nd defendant besides being addressed as MRS. ROSEMARY URUSULA NKU, is also known as MKU-ATU ROSULA and ROSEMARY U. OSULA. The latter ROSEMARY U. OSULA is a director of NEHEMIAH GRACE DEV. LTD which is the unknown entity the defendants used to issue the cheques referred to in paragraphs 20 - 22 above.

In a bid to conceal the non-existent legal personality of the 1st defendant, the 2nd and 3rd defendants had been paying rents using proxy companies such as Messrs

OSVY BUSINESS VENTURES and NEHEMIAH GRACE DEV. LTD that have no valid contract and relationship with the claimant.

PW1 tendered the following documents:

a) Letter dated 9th June, 2016 addressed to the Defendants as AONODODER INVESTMENT LIMITED - Exhibit P1.

b) Certified True Copy of Writ of Summons dated 27/11/2020 in CV/3303/2020 between MABON ESTATES LIMITED V AONDOVER INVESTMENTS LIMITED & ANOR. – Exhibit P5.

c) Out of Court Terms of Settlement dated 17/06/2022 executed by the claimant and the 3rd defendant- Exhibit P6.

d) Two cheques of Zenith Bank dated 15 and 25th August 2022- Exhibit P7.

e) Letter dated 21st November, 2022 issued by the Claimants Exhibit P8.

f) Notice of discontinuance dated 27th March, 2023 with respect to CV/3303/2020 between MABON ESTATES LIMITED V AONDOVER INVESTMENTS LIMITED & ANOR Exhibit P9.

g) Copy of letter dated 1st April 2023 issued by Sydney I. Ibanichuka and the delivery notice dated 5th April 2023 issued by DHL Courier Service Exhibit P10.

h) Certified True copy of status Report issued by Corporate Affairs Commission in respect of NEHEMIAH GRACE DEV. LTD and OSVY BUSINESS VENTURES - Exhibit P12.

i) Letter dated 21st June, 2023 headed Release of NO. 53 Usuma Street, Maitama, Abuja- Exhibit P13.

During cross-examination of PW1 by learned counsel for defendants [C. M. Molokwu Esq.], he stated that Exhibit P1 was personally written by him and handed over to the defendant but the defendant refused to sign the tenancy agreement till date and that was 2016. He admitted the defendant is a yearly tenant. From Exhibit P8 they gave defendant one month notice to vacate

possession but there were reasons for it. The defendants carried out repairs without their consent and broke the building into two. The proof of service of Exhibits P8 and P9 are via courier.

Evidence of DW1 –Lewis OsiInnih:

The evidence of DW1 is that he is the 3rd defendant an estate surveyor and legal representative of the 1st defendant. DW1 denied Paragraph 6 of the statement of claim as defendants never presented the 1st defendant as Aonododer Investment Limited. The Claimant misunderstood the name of the 1st defendant which was clarified by the acceptance letter Exhibit P13.

With regard to paragraphs 11 (a-c), 12 and 13 of the claim, while the 1st defendant was in quiet possession of the property and well before the expiration of the 1st defendant's tenancy, property was put up for sale and claimant invited potential buyers and members of the public to trespass onto the property and disturb the quiet enjoyment of the defendants. The defendants unsure of the intention of the claimant could not proceed to renew the rent for fear of being shortchanged by a possible new owner of the property.

Contrary to paragraph 13(a-c) of the claim, the defendants never received any notices of renewals of tenancy, arrears of rent and notice to recover possession from the Claimant in respect of the property.

In response to paragraphs 14, 15 and 16 of the Statement of Claim, the defendants state that sometime in July 2020, the 3rd defendants approached the claimant about payment of the outstanding rent but he was informed that the arrears of rent was almost 100 Million as opposed to the 90 million agreed between the parties. Before the discrepancy in the outstanding sum could be settled, the claimant filed Suit No. CV/3303/2020 as the defendants was already in the process of making payment; they instructed their lawyers to settle the matter out of court.

That in response to paragraphs 17 to 23 of the claim, the defendants executed the out of court settlement in good faith and are in the process of carrying out the terms of the settlement. The claimant cannot therefore use the settlement to prejudice the court against the defendants in this case.

That contrary to paragraph 28 of the Statement of Claim, the defendants deny that they were served with any notice to quit dated 21st November, 2022 from the claimants to deliver vacant possession of the property.

That the defendant is a yearly tenant and is entitled to 6 months' Notice to Quit and that by the settlement agreement of 17th June, 2022, the 7 days' notice of owner's intention to recover possession dated 1st April, 2023 is premature and invalid. The defendants can only be issued a 6 months' Notice to quit before the expiration of the tenancy on 1st of June, 2023.

That Contrary to the averments in paragraphs 33to 39 of the claim, the identity of the defendants is not in issue between the parties as all documents and payments in respect of the property, were executed by the 3rd defendant and other legal representatives of the 1stand 2nd defendants. The defendants have never misrepresented themselves to the claimant or denied liability in respect of the property.

During cross examination of DW1 by learned counsel for the claimant B. L Tebira, he denied signing Exhibit P13 and page 63 of Exhibit P5. He is not the M.D of the 1st defendant and 1st defendant is not his company. His principal is not owing the claimant arrears of rent. He admitted to signing exhibit P6 as there was an out of court settlement of which payment has been made till date. The 2nd defendant goes by different names. Witness denied concealing the name of the 1st defendant to avoid liability.

Documents tendered through DW1 by Claimants counsel:

a) Certified True copy of Search Report from Corporate Affairs Commission of ANNADOVA INVESTEMENT LTD - Exhibit D1.

b) Certified True copy of Status Report from Corporate Affairs Commission of ANNADOVA INVESTEMENT LTD - Exhibit D2.

Issues for Determination:

At the end of trial, B. L Tebira Esq. filed the final address of the claimant on 7/9/2023 and same was deemed adopted by the court.

O. I. Ojo filed the final address of the defendants on 26/9/2023.

On 28/9/2023, B. L TebiraEsq filed the claimant's reply on points of law. On 28/9/2023, the learned counsel for the parties adopted their respective final addresses.

Learned counsel for the claimant distilled a sole issue for the Court's determination to wit:

Whether from the material facts pleaded and exchanged by the parties, the Claimants have established by a preponderance of evidence that they are entitled to the reliefs stated in their writ of summons and statement.

Learned counsel for defendants posed 2 issues for determination, viz:

1. ***whether or not appropriate statutory notices required to determine the tenancy of the 1st defendant in this case were proved to have been served on any officials of the defendant.***
2. ***whether or not the honourable court possesses the requisite jurisdiction to entertain this suit in the circumstances***

From the evidence adduced by the parties and the submissions of the learned counsel, the Court is of the considered opinion that the issue raised by the claimant calls for determination in this matter.

Submissions of Learned Counsel for the Claimant:

Counsel submitted that, the parties have not joined issues as to their capacities as landlord and tenant. The parties are also in agreement that the rent for the property is Thirty Million Naira per annum; the relationship between the parties is that of a landlord and tenant. Section 2 of the Recovery of Premises Act, Cap 544 (ROPA) and despite the fact that there was no tenancy agreement in writing, the authorities cited are to the effect that a valid tenancy agreement and relationship was established between the claimant and the defendant when the said rent for 2016 was paid and the defendant took possession of the property.

Thus these admitted facts need no further proof. Relying on ***PALI V ABDU & ORS (2019) LPELR 46342 SC.***

Proof of arrears of rent is the exhibit P6 being the Memorandum of Understanding and Settlement out of court dated 17th June, 2022 which clearly shows that they were already in arrears of rent of N80,000,000 spanning from 2017 to 2022. From evidence of PW1, the sum of N45,000,000 was settled leaving an outstanding balance of N35,000,000 for the period between 28th July 2020 to 27th July 2022. Exhibit P7 is proof of the outstanding arrears of rent. Defendant did a general traverse and did not specifically contradict the facts proved by the claimant. Relying on ***ARIGBABU V. OYENUGA (2019) LPELR - 47381 (CA)***.

It is counsel's submission that failure of a tenant to pay rent and show proof of payment of rent amounts to a breach of the tenancy agreement which will entitle the landlord to file a suit to take possession of the property.Thus where a claimant or landlord pleads that the tenant has not been paying rent, the onus or burden of proof rests on the defendant/tenant to show proof of payment of such rent.

Counsel submits that under cross examination, DW1 testified that he is not in arrears of rent but failed to plead material facts about payment of the rent or tender proof of payment of rent. It is submitted that the defendants have failed to discharge this burden and we urge the court to discountenance the testimony of the defendants and find that the defendant is in arrears of rent for the period between 28th July 2020 - 27th July 2022 to the tune of ₦35,000,000.00.

Tebira Esq. submits that the defendants in attempting to justify their refusal to pay rent and being in arrears of rent have pleaded in paragraph 5 of their Statement of Defense which is, that the Claimant disturbed her peaceful and quiet enjoyment when the Claimant put up the property for sale and invited potential buyers and members of the public to trespass into her property and alleged that there were discrepancies in the amount to be paid as rent which were in the process of being resolved before the Claimant instituted the suit in CV/3303/2020; the Defendant was not able to prove their assertion, but went ahead to execute an out of court settlement.

Counsel argued that that the reasons stated in paragraphs 5 and 7 of the Statement of Defence were before the institution of the suit in CV/3303/2020 and execution of exhibit P6. It is submitted that the defendants have failed to justify why they reneged on their 2022 out of court settlement. They again failed to justify why they fell into arrears after executing exhibit P6 and from the pleadings, the Defendants have admitted their arrears of rent. Based on exhibit P6 facts admitted need no further proof. ***PALI V ABDU SUPRA.***

Tebira Esq. further stated that defendants alleged in paragraphs 8 and 11 of the statement of defencethat Exhibit P6 is premature and invalid only to turn around to state that they were in the process of giving effect to the terms of settlement. In same vein defendants do not want this court to admit the exhibit P6 as it qualifies as a document made without prejudice. Counsel urged court to rely on ***UNIVERSITY OFABUJA V AMCON & ORS (2019 LPELR 47306 CA*** and ***AMCON & ANOR V ISRAEL AEROSPACE INDUSTRIES LTD & ANOR. (2019) LPELR 47324 CA*** to discountenance that line of argument. Exhibit P6 is not a document procured during negotiation but a concluded agreement which has nothing marked on the face of it to suggest it is a document made without prejudice and an admission of defendant to liability of N35,000,000.

On Claimants entitlement to vacant possession having issued the necessary statutory notices; Tebira Esq. submits that based on default by the defendants to pay rent, there was no need to serve a 6 months' notice to quit. The defendants were only entitled to 7 days' notice of owner's intention to recover possession. Counsel submitted that case law has departed from mandatory requirement of issuance of statutory notices and created circumstances and exceptions to the issuance of mandatory notices. Referring to the following decisions ***COKER V ADETAYO & ORS (1996) LPELR -879 SC; (1996) 6 NWLR (PT 454) 258, OLANIYAN V SHOKUNBI (1997) 6NWLR (PT 509) P. 446, SPLINTERS NIG. LTD & ANOR V OASIS FINANCE LTD (2013) LPELR 20691 (CA).***

Counsel further argued that exhibit P6 shows the negotiated agreement of the parties, the defendant would pay all outstanding rent and a new tenancy would commence on the 1st day of June, 2022 with a rent increment. If the defendants had cleared their rent arrears of N80,000,000 a new tenancy regime would have commenced on 1st June, 2022. Facts reveal that the defendants failed, neglected and refused to pay the total sum of N80,000,000 thus putting an end to the

tenancy between the parties commencing 28th July, 2016 and renewable from year to year until 27th July, 2022. The tenancy was determined on 27th July, 2022 when defendant fell into arrears of rent of N35,000,000. Based on the default by the defendants there was no need to serve a 6 months' notice to quit all defendant was entitled to was 7 days owners intention to recover possession. Relying on the apex decision of ***PILLARS V DESBORDES (2021) 12 NWLR (PT 1789) P. 122 ratio 6 and BANKOLE & ANOR. V OLADITAN (2022) LPELR 56502 CA.***

Counsel further submitted that the payment of mesne profit as per paragraphs 19 and 43 (c) of their statement of claim at the sum of N2,875,000 monthly based on the negotiated agreement in exhibit P6 of a rent increment of ₦34,500,000.00 commencing from 1st June 2022. It is submitted again that exhibit P6 as regards claim for mesne profits constitutes an admission for which the defendants cannot deny. Relying on the Supreme Court decision in ***CHEMIRON (INTL) LTD V. STABILINI VISINONI LTD (2018) LPELR - 44353 (SC).***

Court was urged to award 10 % post judgement interest in the event of a default by the defendants to pay liquidated sum. See Order 39 Rule 4 of the High Court Rules 2018 and ***D. MUSTAPHA & CO (NIG) LTD V UNION BANK (2015) LPELR 40380 CA.***

Exhibits D1 and D2 were tendered through DW1 by the claimant for purposes of cross-examination. Exhibit D1 was a Notice of denial of reservation of name of AONDOVER INVESTMENTS LIMITED dated 13thApril, 2023. Exhibit D2 is the Status report of ANODOVER INVESTMENTS LIMITED. The said Exhibit D2 evidently shows the 2nd defendant as the Director and alter ego of ANODOVER INVESTMENTS LIMITED and that the defendants deliberately and falsely misrepresented themselves to the claimant as AONDOVER INVESTMENTS LIMITED instead of their original name as ANODOVER INVESTMENTS LIMITED.

It is counsel's further submission that the claimants in their pleadings in paragraphs 33 to 36 of her statement of claim made the assertion that the 1st defendant was not registered but rather than specifically traverse the said paragraph, the defendants in paragraph 12 of their Statement of Defence denied it with no specific evidence to rebut the allegation. DW1 under cross-examination affirmed that he has not seen the certificate of incorporation of the 1st defendant

but still insisted that the 1st defendant is registered. In the face of Exhibits DI and D2, the defendants have not offered any concrete challenge to the lack of registration of the 1st defendant.

In the absence of definite proof of registration of the 1st defendant, the 2nd defendant by her numerous names as well as the 3rd defendant are jointly and severally liable in the event judgment is entered against them in this suit.
DW1 materially contradicted himself in material aspects of the case and his testimony should be jettisoned relying on ***AMALA V STATE (2004) 12 NWLR (PT 888) 520.***

Submissions of Learned Counsel for the Defendants:
On Issue one, O. I. Ojo Esq. submits that statutory notices required to determine the tenancy of the 1st defendant in this case were not proved to have been served on any official of the 1st defendant.

It is counsel's submission that in any action for recovery of premises, the condition precedent must be duly followed failure of which the action will not be entertained. By virtue of the evidence of the defendants and the evidence elicited during cross-examination from the claimant's sole witness, it is not in dispute that the 1st defendant is a yearly tenant and that there was no express agreement between the 1st defendant and the claimant with respect to the determination of the tenancy and in a situation of this nature, it is the provisions of Statute that apply.

Counsel relied on Sections 8(1)(a-d) and 8(3) and also section 7 of ROPA which stipulates the length of notice to determine certain tenancy.

OjoEsq. submits further that the claimant failed to comply with the above statutory provisions as regards the length of notice required and that as at the time the claimant instituted this action the cause of action had not arisen as there was still a subsisting tenancy between the claimant and the 1st defendant.
Counsel submitted that assuming without conceding that the tenancy was already determined as purportedly claimed by the claimant, the length of notice issued by the claimant did not comply with Section 9 of ROPA. Thus, the 1st defendant being a yearly tenant was entitled to six months' notice.

Counsel relied on the case of ***COBRA LTD v. OMOLE ESTATES & INV. LTD (2000) 5 NWLR (PT. 655) | @ PP. 12-13, PARAS. G-A.***

Further, assuming the tenancy was at will, by virtue of section 8(1)(a) of ROPA the 1st defendant is entitled to 7 days' notice to quit before the notice of owners intention and same was not served.

It was counsel's further submission that the evidence of the claimant's sole witness is riddled with fundamental contradictions which are very fatal to its case. Counsel submitted that the failure of the claimant to prove service of the statutory notices on the defendants is fatal to its case. Procedure in Recovery of Premises Act must be strictly followed relying on ***AYINKE STORES LTD V ADEBOGUN (2008) 10 NWLR (PT 1096) 612 @ 629 PARAS C-H.***

Counsel submitted that where there are material contradictions in the case of a party the Court cannot without credible explanation by evidence pick and choose which piece of evidence to believe and which piece of evidence not to believe. That burden falls squarely on the party who will fail without explanation in the circumstances and relied on the case of **AYORINDE v. KUFORIJI (2022) 12 NWLR (PT 1843) 43 at 80-81 paras. H-A.**

Ojo Esq. argued that based on the available evidence before the court the requisite notices were not served on the defendant and failure of which amounts to a breach of the conditions precedent in recovery of premises actions. Referring to ***SPLINTERS (NIG) LTD V OASIS FINANCE LTD (2013) 18 NLWR (PT 1385) 188 @ 224-225, PARAS D-A***. Thus, court lacks jurisdiction to entertain the suit.

Ojo Esq. further submits that the awareness of the claimant to the series of renovations carried out on the said property was shown during cross-examination by PW1. And by virtue of the ROPA, the defendants are entitled to adequate compensation from the Claimant in respect of the improvements. Counsel relied on Section 14 of the ROPA.

The defendant submitted that reliefs 'b' and 'c' are contradictory and would amount to double compensation for the Claimant which is unattainable in law and on the claimants claim for arrears of rent from 28th July, 2020 to 27th July,

2021 and 28th July, 2021 to 27th July, 2022 and claims for mesne profit of N2,875,000 from 1st June 2022 until possession is relinquished, counsel submitted that assuming without conceding that the defendant's tenancy was determined 27th July, 2022 then mesne profit can only be calculated from the 28th July, 2022. Relying on ***KUSFA V UNITED BAWO CONST. CO. LTD (1994) 4NWLR (PT 336) 1 @ 16 PARAS F-H, CAPITAL OIL AND GAS INDUSTIRES LIMITED V OTERI HODLINGS LIMITED (2021) 1 NWLR 483 @ 499 PARAS E-H and ODUTOLA V PAPERSACK NIGERIA LTD (2006) 18 NWLR (PT 1012) 470 @ 495-496, PARAS G-B.***

On Issue 2 Counsel submitted that this Honourable Court lacks the required jurisdiction to entertain this suit as this suit was purportedly instituted under fast track procedure; the originating process does not reflect the Form. Referring to Order 37 Rule 4 of the Rules. Ojo Esq. submitted with respect that the originating process in this action does not conform with the required Form 32 (Which is solely for Fast Track) as can be seen on the face of the process. Referring to ***ILA ENT. LTD V UMAR ALI & CO. (NIG) LTD (2022) 18NWLR (PT 1862) 501 @ 522 PARAS C-E*** counsel are expected to follow the procedure provided in the rules.

Court is deprived of jurisdiction to entertain this suit as there is no letter of instruction from the claimant authorizing the institution of this suit. Thus counsel lacked the authority to file the suit. There is no letter of instruction to institute the action. Relying on ***COKER V ADETAYO SUPRA @ 625 PARAS C-D.***

It is counsel’s further submission that the claimant presents itself as an artificial person under the law. Assuming without conceding that the claimant is a juristic person, it is only the claimant that can institute or defend an action against it as in this case. A company acts or takes decisions through its members who must pass a resolution in general meeting as regards any matter that concerns the company hence a sole member of a company cannot institute an action on behalf of the company without a resolution authorizing same. Counsel relied on **Section 86(1) of the Companies and Allied Matters Act, 2020 (CAMA).**

Counsel submitted that the defendant also denies the incorporation of the 1st defendant under CAMA in paragraphs 1 and 3 of their statement of defence whereas the defendants' sole witness, under cross-examination also testified that

he had no idea whether the 1st defendant was registered under the CAMA as he has not for once sighted its certificate of incorporation.

Counsel in conclusion submitted that based on the above submissions coupled with cited judicial pronouncements, both the claimant and the 1st defendant, being unknown to law, lack the capacity to sue and be sued.

Claimants reply on points of law to defendants submissions

The Defendants in paragraph 5.07 had argued that the 7 days notice of owner's intention to recover possession (Exhibit P10) was not served on any of the defendants as there was no proof of service. Tebira Esq. submitted that it is too late in the day for the defendants to deny service as this was not denied in their pleadings. The relevant paragraph which traversed the issue of 7 days notice of owner's intention to recover possession is paragraph 11 of their statement of defence states thus:

"In response to paragraph 31 and 32, the Defendants avers that by the settlement agreement of 17th June, 2022, the 7 days' notice of owners intention to recover possession dated April 2023 is premature and invalid."

The Defendants never denied service in their pleadings, they only stated that the notice was premature and invalid. Therefore, facts not denied are deemed admitted. Relying on***FEDERAL CAPITAL DEVELOPMENT AUTHORITY V. ALHAJI MUSA NAIBI (1990) 3 N.W.L.R. (PT. 138) 270 RATIO 4 ON PAGE 272, ALSO PAGE 281, PARAGRAPHS F-G.***

The service of Exhibit P10 is sufficient proof of service and complies with Section 104 of CAMA as same was served by post.

In paragraph 5.11, the defendant had argued that since he made expenditure on improvements on the property, he is entitled to be compensated for such improvements and relied on Section 14 of ROPA. The defendant failed to quote Section 15 of the Act which requires that the consent first had and received of the landlord is necessary for any compensation to be paid to the tenant. In this case, the defendant has not exhibited any proof of consent gotten from the claimants for any form of improvements. Moreso, the said claim for

compensation does not form part of any counter-claim or relief sought by the defendants. Nothing in the pleadings of the defendants shows the amount the defendants expended on any improvements and Court is not a Father Christmas and will not grant any relief not specifically prayed for. Referring to ***UMEH V. NWOKEDI (2016) LPELR 41470 (CA)*** court was urged to discountenance the claim for compensation.

The defendant in paragraph 5.12 has asserted that the claimant's reliefs 'b' and ‘c’ are contradictory and would amount to double compensation. Counsel submitted that the issue of double compensation would only arise where there is no consent from the parties. In this case, the defendants executed exhibit P6 which specifically states when the previous tenancy will terminate and a new tenancy will commence. The fact that there is an overlap which may purportedly amount to double compensation is based on the agreement of the parties. For this, the court is bound to enforce the agreement of the parties. Relying on ***CLEAN CREDENTIAL LTD V. I.T.F. GOVERNING COUNCIL (2019) 17 NWLR (PT. 1701) 318 CA; MEKWUNYE V. IMOUKHUEDE (2019) 13 NWLR (PT. 1690) 439 SC.***

The Defendant in paragraph 6.00 has argued that this Honourable Court lacks the jurisdiction to entertain this suit on the ground that the originating process in this action does not conform with the required form 32. It is submitted that this argument is misconceived.

DECISION OF THE COURT

In the case of ***IHEANACHO V UZOCHUKWU (1997) 2 NWLR (Pt.487) 257 @ 269-270 H-A*** the Supreme Court set out the procedure for recovery of premises as follows:

"A landlord desiring to recover possession of premises let to his tenant shall:

(a) Firstly, unless the tenancy has already expired, determine the tenancy by service on the tenant of an appropriate notice to quit.

(b) On the determination of the tenancy, he shall serve the tenant with the statutory 7 day's notice of intention to apply to the court to recover possession of the premises.

(c) Thereafter, the landlord shall file his action in court and may only proceed to recover possession of the premises according to law in terms of the judgment of the court in the action

In the case of ***GAMBARI V GAMBARI (1990) 5NWLR (PART 152) 572 , 589***the appellate court had this to say per Achike JCA;

"it is a pre-condition for the eviction of a tenant from the premises he holds of his landlord that he must first be served with the prescribed statutory notice to determine the tenancy (the length of the notice will depend on the nature of the tenancy or such period otherwise agreed by the parties)…"

The issue before me is whether the claimant in this case as evidenced by the documents filed has followed the laid down procedure for recovery of premises.

The notices filed in the present suit are:

1. 1 monthNotice to Quit dated 21/11/2022 dated Exhibit P8
2. Notice of owners intention dated 01/04/2023 dated Exhibit P10

Section 7 of ROPAprovides;

"When and so soon as the term or interest of the tenant of any premises, held by him at will or for any term either with or without being liable to the payment of any rent, ends or is duly determined by a written notice to quit as in Form B, C, or D, whichever is applicable to the case, or is otherwise duly determined, and the tenant, or the tenant does not actually occupy the premises or only occupies a part thereof is actually occupied, neglects or refuses to quit and deliver up possession of the premises or of such part thereof respectively, the landlord of the premises or his agent may cause the person so neglecting or refusing to quit and deliver up possession to be served, in the manner hereinafter mentioned, with written notice, as in the manner hereinafter mentioned, with written notice, as in form E signed by the landlord or his agent, of the landlords intention to proceed to recover possession on a date not less than 7 days from the date of service of the notice."

Section 8 of ROPAfurther provides;

8(1) where there is no express stipulation as to the notice to be given by either party to determine the tenancy, the following periods of time shall be given –

(a) In the case of a tenancy at will or a weekly tenancy, a week's notice;

(b) In the case of a monthly tenancy, a month's notice;

(c) In the case of a quarterly tenancy, a quarter's notice;

(d) Subject to subsection (2) of this section in the case of a yearly tenancy, half a year's notice

Counsel to the defendant had argued that it was a yearly tenancy and 6 months notice was not served on the defendant and that even if the tenancy was at will, there is no proof that the appropriate statutory notices had been served on either the defendant or her representatives in order to determine the tenancy and failure to serve the requisite notices amounts to a breach of the condition precedent in recovery of premises actions. There is also no proof that a letter of instruction was issued to the claimants lawyer to recover premises.

Counsel to the claimant on the other hand had argued that the case law has developed beyond the requirement to serve the notices and in this case the defendant is not even entitled to quit notice and moreover, there is proof that 7 days owners' intention to recover possession had been served. Counsel relied extensively on the following cases;

1. ***COKER V ADETAYO & ORS (1996) LPELR -879 SC; (1996) 6 NWLR (PT 454) 258,***
2. ***SPLINTERS NIG. LTD & ANOR V OASIS FINANCE LTD (2013) LPELR 20691 (CA).***
3. ***PILLARS V DESBORDES (2021) 12 NWLR (PT 1789) P. 122 ratio 6***
4. ***BANKOLE & ANOR. V OLADITAN (2022) LPELR 56502 CA.***

The question to be thrashed out at this point is the nature of the tenancy before me.

Under Cross-examination of PW1 he admitted:

Ques: ***Is defendant a monthly/weekly or yearly tenant?***
Ans: ***yearly tenant***

Paragraph 7 and 8 of the statement of claim, Paragraphs 10 and 11 of the claimant'switness statement on oathreveal that the tenancy was a yearly one. Exhibit P1 is the offer letter which reveals that the tenancy was yearly seepage 2 item 2;

CURRENT RENTING PRICES:

1. The current lease rate for the property per year is **Thirty million naira (N30,000,000)** net

Exhibit P13 is the letter of acceptance and the last paragraph states:
Attached are 3 copies of Zentih Bank drafts dated 20th June, 2016 in favour of Mabon limited for the total sum of N30,000,000 (Thirty Million Naira Only) being payment for 1 year rent.

It is clear the tenancy was yearly, now ordinarily the defendant should be entitled to a 6 months' notice to quit as it is evident that no tenancy agreement was executed by the parties. But it is evident from the case of the claimant that the parties sought to explore settlement and entered into a memorandum of understanding and settlement out of court exhibit P6 which DW1 admitted to signing under cross-examination:

Ques: ***Take a look at Exhibit P6***
Ques:: ***Is that your signature on P6?***
Ans: ***Yes I signed it there was an out of court settlement of which payment has been made till date***

I will reproduce Exhibit P6 thus;
17th June 2022
The Managing Director/CEO
AONDOVER INVESTMENT LIMITED
53 Usuma Street, Maitama – Abuja, Nigeria
C/o Mr Lewis Innih (Representative)

Dear Ma,

MEMORANDUM OF UNDERSTANDINGSETTLEMENT OUT OF COURT FOR 53 USUMA STREEET, MAITAMA, ABUJA AT N80,000,000.00 (EIGHTY MILLION NAIRA)

With reference to our meeting with Mr Lewis Innih on 16th June 2022, Mabon Limited and Aondover Investment Limited have mutually agreed and accepted to place a payment plan for the repayment of the outstanding rental arrears with accordance to the Court Order. Both Mabon Limited and Aondover Investment Limited hereby accept and agree that payments will be made in two bullets of N40,000,000.00(Forty Million Naira) each.

1) A bullet payment of N40,000,000.00(Forty Million Naira) to be paid by 30 June, 2022 being half of the outstanding.

2) A second and final payment of 40,000,000.00 (Forty Million Naira) to be paid by 31 July 2022 being the final instalment of the agreed Memorandum of Understanding.

Please make payments into the following account:
Account Name:OnyinyechiNkemdirim
Account Number:2252674406
Bank Name: UBA

We have also agreed that a **NEW TENANCY AGREEMENT** will be signed to reflect the current tenancy year beginning 1st June, 2022 to 31st May 2023.
We also like to take this opportunity to re-inform you that Mabon Limited has decided to increase your current tenancy rent by 15% to reflect the prevailing market rate from N30,000,000.00 to N34,5 00,000.00 (Thirty Four Million, Five Hundred Thousand Naira).

It is clear that although the parties started out as yearly tenants, along the line, the nature of the tenancy changed when they signed exhibit P6 above. Exhibit P6 determined the tenancy between the parties and the defendant became a tenant at will.

In ***BOCAS NIGERIA LTD v. WEMABOD ESTATES LTD CITATION: (2016) LPELR-40193(CA)*** the court held;

"...There are 3 main types of tenancy, tenancy at will, periodic tenancy and fixed term (or term certain)." ***Per AUGIE, J.C.A. (P. 18, Para. A)***

Now looking at the notices filed, what is before this court is exhibit P8 which is a months'noticeto quit. Cross-examination of PW1 revealed thus:

Ques: ***Take a look at Exhibit P8 how long did you give defendant to vacate possession?***

Ans: ***We gave her 1 month but there are reasons for this.***

Ques: ***The said Exhibit P8 and P10 you claim you served them to defendants is there any proof to show you served them?***

Ans: ***They were served through courier I think there is proof we gave all documents to the lawyer.***

Looking at Exhibit P8, there is no proof of service of the notice to quit and the witness PW1 failed to present proof of service. Exhibit P8 is a condition precedent for recovery of premises but it falls short of the statutory requirement. In the locus classicus of ***AFRICAN PETROLEUM LTD V OWODUNNI (1991) 8 NWLR PART 210 PAGE 391***, the court classified tenancies into contractual and statutory tenancies. A statutory tenancy being one not backed by an agreement and the mode of determination, the length of notice to be given has to be dealt with by looking at section 8 of ROPA.

The case of***SPLINTERS NIG. LTD & ANOR V OASIS FINANCE LTD (2013) LPLER 20961 CA***was relied on by the claimant counsel;

1. *The brief facts of the case was that the respondent leased the premises known as Plot B, Idejo Towers, Lagos to the 1st appellant rent was for a term of 2 years certain from 1st January 2000 to 31st December 2001 at a yearly rent of N650,000. The lease was renewed on 1st January 2002 for a year and on 1st January 2003 for another year. In 2004 the respondent sued the appellant at high court lagos and claimed for possession of the premises and mesne profits. After the respondent served its writ of summons and statement of claim on the appellants, they filed their*

statement of defence in which they denied being served statutory notices before respondent filed its suit. The trial court found that the lease between the parties was determined by effluxion of time on 1st December, 2003. The trial court held that the statutory notices (exhibits C1P and C1Q) the respondent served were superfluous and entered judgment in favour of the respondent.

2. *The court of appeal allowed the appeal in favour of the appellant being the tenant relying on the case of IHEANACHO V UZOCHUKWU that "it is only when the tenancy has not expired that there will be need to determine same by notice to quit. It is obvious that if at the time the landlord seeks to recover his premises the tenancy had already expired, it is reasonable to assume that there will be no need for a quit notice. All the landlord will be required to serve on the tenant would be the statutory 7 days' notice of intention to apply to recover possession of the premises. In the circumstance of the present case and in view of the fact that the parties had gone on to the stage where the tenancy was being renewed on an annual basis, it was proper that the respondent should issue the appellant quit notice as an indication would be no further renewal of the lease at the end of the existing tenancy due to expire December 2003. See page P. 31-32 paras G-D.*

3. *The issue before the appellate court was whether the statutory notices had been served on the appellant as required by law and the appellate court had held that there was no convincing evidence that the notices were served on the appellants. Thus, the claim of the respondent in the lower court was not brought by due process of the law and upon fulfilling the condition precedent to the assumption of jurisdiction.*

It is clear that this case so relied upon by the claimant counsel will not avail him as I have painstakingly reproduced the relevant portions to show that it is not on all fours with the suit at hand and the court of appeal did not dispense with the need for service of the notice to quit as counsel would have us believe.

Counsel to the claimant also relied heavily on ***COKER V. ADETAYO & ORS (1996) LPELR-879(SC)"In our law on Recovery of Premises there is hardly any ambiguity in what a landlord can do in getting possession***

back from a defaulting or unfriendly tenant; so it is clear how possession can be recovered when the premises is required for use of the landlord or family. For monthly tenancy, one month's notice is required, for yearly tenant six months' notice is required. In other cases the notice required is that embodied in the tenancy agreement between the parties" Per BELGORE,J.S.C) (Pp. 7-8 paras. G).

"...failure to pay rent as and when due and without any reasonable explanation for such default, or bringing on the premises things or creating on the premises situations that threaten not only the safety of premises and occupiers but render quiet occupation impossible, the intention to recover must be served on the party followed by Notice to Quit to be decided by the court. Similarly, when the premises are required for overriding convenience of the family, Notice of intention to recover is sufficient to lead to recovery of the premises. All these remedies could be invoked individually or cumulatively if they do exist." (Pp. 8 paras. B).

But ***COKER V ADETAYO*** did not dispense with the need to serve the Notice to Quit as I have reproduced above. If it is a yearly tenancy, 6 months' notice, if it is a month's tenancy a months' notice and so on.

However, counsel relied on the more recent apex decision of ***PILLARS (NIG) LTD v. DESBORDES & ANOR (2021) LPELR-55200(SC)***particularly the concurring decision of Ogunwumiju JSC.

"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 Court delivered on 8/2/2000 about twenty years ago. After all, even if the initial notice to quit was irregular, the minute the writ of summons dated 13/5/1993 for repossession was served on the appellant, it served as adequate notice. The ruse 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 adherence to any

technical rule. Equity demands that wherever and whenever there is controversy 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, <u>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 ends. The Court would only be required to settle other issues if any between the parties</u>. (Pp. 24-26 paras. E)

The case of ***BANKOLE & ANOR v. OLADITAN (2022) LPELR-56502(CA)*** towed the same line and quoted extensively the decision of Ogunwumiju JSC.

"The Appellants urged this Court to invalidate the writ of summons commencing this action at the lower Court as same was based on an invalid Notice of Owner's Intention to Recover Possession, whose validity is the condition precedent to the initiation of proceedings in Court. The writ of summons in this suit was filed and issued on 18/08/2008. On 26/09/2008, the Appellants, as Defendants, filed a Memorandum of Conditional Appearance as contained at pages 28 and 29 of the Record. The matter remained in Court until 28/03/2014 when judgment was entered in the suit. The suit lasted over 5 years. From the commencement of the proceedings in August, 2008 to the delivery of judgment in March, 2014, the Appellants have more than enough notice that the landlords are desirous of possession of their property and recovery of arrears of rent. Gone were the days when cantankerous, troublesome and unpleasant tenants hold on to technicalities of service of statutory notices to defeat the claim of property owners by illegally holding unto such properties. The Supreme Court has now responded to the sad occasion by coming to the rescue of landlords and property owners whose cantankerous and recalcitrant tenants have over the years been clinging on to the issue of improper

service of statutory notices to unjustifiably hold on to the landlords' properties without payment of agreed rent or complying with the terms of the lease agreement. In the case of Pillars Nigeria Limited vs. William KojoDesbordes& Anor (2021) LPELR-55200 (SC) @ pages 24-26, the Nigerian Judicial Oracle took a very proactive and practical decision, per Ogunwumiju, JSC, as follows:"...."To the glory of God, we are now at a new dawn with the above-quoted decision of the apex Court. On the basis of this authority, which I must kowtow, I hold that notwithstanding the irregularity in the service of the Notice to Tenant of Owner's Intention to Recover Possession of Property on the 1st Appellant, the writ initiating this suit cannot be invalidated as the service of the writ itself constitute sufficient notice to the Appellants that the Respondent wants to recover possession of the property together with arrears of rent." Per SIRAJO,J.C.A (Pp. 9-13 paras. F)
Thus it is clear that from the claim filed, exhibits attached and testimony of PW1, the tenant is firmly placed as a tenant at will who is entitled to 7 days notice to quit. However, from the notices served, there is no proof that Exhibit P8 was served on the defendant. As the PW1 only confirmed to have served the notice of owners intention via courier exhibit P10 Going from the apex decision of ***PILLARS V DESBORDES***supra and the court of appeal decision of ***BANKOLE V OLADITAN***supra, the court cannot shut its eyes to the principle of stare decisis and can only but rely on the decision of the apex court and the court of appeal. See ***PDP V. ORANEZI & ORS (2017) LPELR-43471(SC) (PP. 9-10 PARAS. E).***

This court in view of the justice of the case will accept the service of the writ of summons as sufficient notice to the tenant that the claimant intends to recover possession of its property together with the arrears of rent. That is what the justice of the case demands and I will abide by it.

Counsel to the defendant at Para 5.12, Page 10 of its final written address had argued that reliefs b and c are contradictory and would amount to double compensation to the claimant. As claimant on the one hand claims arrears of rent 28th July, 2020 to 27th July, 2021 and 28th July 2021 to 27th July, 2022. On the other hand, the claimant also claims for mesne profit of N2,875,000 from 1st June, 2022 until possession is relinquished. The question to resolve here is the

time the tenancy was determined as this will determine when mesne profit will begin to run.

Clarifying the meaning and nature of mesne profit, the Law Lord, Oputa, J.S.C. in ***DEBS & ORS V. CENICO NIGERIA LTD (SUPRA), (1986) LPELR-934(SC) AT PAGES 7 - 8***, said:

"To begin with, it is necessary to have a clear idea of what mesne profits are. In Bramwell v. Bramwell (1942) 1 K.B. 370; (1942) 1 ALL ELR. 137 at p.13S, Goddard, L.J. described the expression "mesne profits" as "only another term for damages for trespass arising from the particular relationship of landlord and tenant". The expression "mesne profits" 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 profits. Rent is liquidated, mesne profits are not. Rent is operative during the subsistence of the tenancy, while mesne profits start to run when the tenancy expires and the tenant holds over.The action for mesne profits 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 generally calculated on the yearly value of the premises; DEBS &ORS V. CENICO NIGERIA LTD (SUPRA); AYINKE V. LAWAL (SUPRA)." PER OTISI,J.C.A IN IDAM V. NLPC PENSION FUND ADMINISTRATORS & ANOR (PP. 35-36 PARAS B)

Paragraph 11 of the statement of claim, paragraph 14 of the PW1's witness statement on oath states thus;

The defendant's tenancy expired on 28th July 2017 and fell into arrears of rent for the following periods;

a. ***28th July 2017 - 27th July 2018,***
b. ***28th July 2018 - 27th July 2019, and***
c. ***28th July 2019 - 27th July 2020.***
d.

The tenancy was determined on 28th July, 2022 (see Paragraph 30 of the PW1's witness statement on oath) and from then mesne profit begins to run and I so hold.

In the light of the foregoing, I hold that the Plaintiff has discharged the evidential burden placed on him by virtue of Sections 131, 132 and 133 of the Evidence Act, 2011 as amended and I find that the defendant and claimant is entitled to vacant possession and mesne profit.

On the issue of arrears of rent, it is obvious that there is no argument amongst the parties that the defendant is owing, from oral testimony of PW1 and documents attached as exhibits and testimony of DW1 as facts admitted need no further.

Cross examination of DW1

Ques: Are you owing claimant arrears of rent?

Ans: My principal is not owing claimant arrears of rent

Ques: Take a look at Exhibit P6

Ques:Is that your signature on P6?

Ans: Yes I signed it there was an out of court settlement of which payment has been made till date

Ques:Exhibit P6 demonstrates that your owing 80m arrears of rent

Ans:Correct

Ques:By virtue of Exhibit P6 you issued 6 cheques worth N60 million Is that correct?

Ans:Correct

Ques: Out of those six cheques two cheques were dishonoured the two cheques that were dishonoured Direct Credits were made to Mabon GT account with evidence.

Ques: Do you have proof of that direct payment?

Ans: Yes but not here in court

DW1 testified that he is not in arrears of rent but failed to plead material facts about payment of the rent or tender proof of payment of rent. defendant also pleaded in paragraph 5 of their Statement of Defense that the claimant disturbed her peaceful and quiet enjoyment when the claimant put up the property for sale and invited potential buyers and members of the public to trespass onto her property and alleged that there were discrepancies in the amount to be paid as

rent which were in the process of being resolved before the claimant instituted the suit in CV/3303/2020; the defendant was not able to prove their assertion, but went ahead to execute an out of court settlement. The defendants have failed to justify why they reneged on their 2022 Settlement out of court. They again failed to justify why they fell into arrears after executing exhibit P6 and from the pleadings, the defendants have admitted their arrears of rent. Based on exhibit P6 facts admitted need no further proof. See ***MBULA TRADITIONAL COUNCIL & ORS V. ESTATE OF THE LATE BENJAMIN NWAZUE & ANOR (PP. 21 PARAS. C).***

It is also trite law that he who asserts must prove***the correctness of his assertion.***. SEE***OJOH V. KAMALU (2005) SUPRA AT 565 PARAS F – G PER TOBI JSC.***

I hold that the defendant has not discharged the evidential burden placed on him by virtue of Sections 131, 132 and 133 of the Evidence Act, 2011 as amended.

In ***INEME v. INEC & ORS (2013) LPELR-21415(CA) @ PER OTISI, J.C.A. @ Pp. 19-21, Paras. F-C***

"The Appellant has rightly submitted that the burden of proof lies on him who asserts. In civil cases, while the general burden of proof in the sense of establishing his case lies on the plaintiff, such a burden is not static. There may be instances in which, on the state of the pleadings, the burden of proof lies on the defendant. As the case progresses, it may become the duty of the defendant to call evidence in proof or rebuttal of some particular point which may arise in the case. See; Section 131, 132, 133, and 136 of the Evidence Act 2011, which provide thus:
131.

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
(2) When a person is bound to prove the existence of any fact if is said that the burden of proof lies on that person.

132. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
133.
(1) In civil cases the burden of first proving existence or non-existence of a fact 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.
(2) If the party referred to in subsection (1) of this section adduces evidence which ought reasonably to satisfy the court that the fact sought to be proved is established, the burden lies on the party against whom judgment would be given if no more evidence were adduced, and so on successively, until all the issues in the pleadings have been dealt with.
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(1) The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless if is provided by any law that the proof of that fact shall lie on any particular person, but the burden may in the course of a case be shifted from one side to the other.
(2) In considering the amount of evidence necessary to shift the burden of proof regard shall be had by the court to the opportunity of knowledge with respect to the fact to be proved which may be possessed by the parties respectively.

The burden of proof shifted from the claimant to the defendant, but defendant failed to disprove the assertion of the claimant because he asserted without proving with documentary or oral evidence that he made the payments for arrears of rent. This court cannot speculate on the position. It is not the duty of this court to go on a journey of discovery to ascertain the position of what has been paid when same is not contained or provided for in any of the documents before this court and I so hold. It is trite that this court does not delve into speculation and our jurisprudence abhors same. See ***IKENTA BEST (NIG.) LIMITED V. ATTORNEY GENERAL RIVERS STATE (2008) All FWLR (Pt. 417) 1 at 10, P. 36, para. B; P. 37, paras. C - F (SC)*** The defendant has failed to prove same by sufficient materials. The defendant has not brought sufficient materials before this court to prove his assertion***.*** See ***WILLIAMS V HOPE RISING (1982) 1-2 SC 145.*** A party craving the indulgence of the

court must proffer sufficient reasons and same has not been done by the defendant and I so hold.

Defendants do not want this court to admit the exhibit P6 as it qualifies as a document made without prejudice. I agree with counsel to the claimant relying on ***UNIVERSITY OFABUJA V AMCON & ORS (2019 LPELR 47306 CA*** and ***AMCON & ANOR V ISRAEL AEROSPACE INDUSTRIES LTD & ANOR. (2019) LPELR 47324 CA*** that it is a concluded agreement and is admissible in courtand I discountenance that line of argument.

Both parties alleged that the others witness contradicted himself during trial.Counsel to the defendant argued that:

PW1 (Mr Enoch Gyas) in Paragraph 34 of his witness statement on Oath testified in Chief that a 7 days' notice of owners intention to recover possession dated 1st of April, 2023 was issued on the defendants while in another breath, under the fire of cross-examination, he testified thus "According to the letter, we gave a month Notice." and also, in the same paragraph 34 of his witness statement on oath, PW1 testified that the first 7 days' notice issued on 1st April, 2023 could not be delivered and that same was returned to his office with an accompanying failure delivery notice dated 4th April 2023 issued by DHL Courier Service while in another breath in paragraph 35 PW1 testified that another 7 days' notice of owners intention to recover possession was issued on the same 1st April, 2023 that the initial 7 days' notice was issued and was acknowledged as delivered by the DHL Courier Service.

The contradictions alleged by the defendant counsel are not material to warrant this court declaring the PW1's testimony unreliable as it is clear that the evidence of the claimant to be relied on by this court is Exhibit P8 and P10 and not the notice of owners intention that was returned to the office from the courier delivery which is not before the court. Thus, the defendant has been unable to discredit or impugn the evidence of the claimant's witness and same will be relied upon.

Counsel to the claimant on the other hand argued that under cross examination, DW1 contradicted himself in the following material respects:

a) DW 1 denied the making of exhibit P2 and denied not being Mr. Collins Mbu. This contradicts paragraph 6 of his witness statement on oath where he admitted the existence of exhibit P2.
b) DW 1 also denied the making of the letter in exhibit P5 page 63 wherein he signed as Managing Director.

c) DW 1 denied that the defendants are in arears of rent and that they have complied with the terms of exhibit P6 by paying the arrears of rent. He stated that when the cheques bounced, they did a transfer to the claimants GTBank Plc Account but he did not tender any proof of such payment. This contradicts his statement in paragraph 10 wherein he admitted that they were in the process of carrying out the terms of settlement.

d) DW 1 denied that the 2nd defendant goes by the name ROSEMARY U. OSULA but when he was shown exhibit P12, he changed his testimony that the 2nd defendant also goes by the name ROSEMARY U. OSULA.

e) DW 1 denied that the 1st Defendant is not registered but could not admit or deny the existence of the real name of the 2nd defendant as ANODOVER INVESTMENTS LIMITED when confronted with Exhibits DW1 and 2. The 1st defendant admitted however not having seen the certificate of incorporation of the 1st defendant despite positively admitting in paragraph 6 of the witness statement on oath that the 1st defendant is a limited liability company.

f) DW1 denied his signatures which he signed in various documents purportedly issued by him which documents he had earlier admitted as purportedly issued by him. The court was invited to examine DW1s' signatures in exhibits P13, P6 and P5 page 63 to find that the signatures belonged to DW1.

DW1's denial during cross-examination of ever making exhibit P13 which conflicts with his affirmation in paragraph 6 of his witness statement on oath is so fundamental as to the fact as to whether they accepted the terms of the offer of lease issued by the claimant as seen in exhibit P1. His denial Stems from the fact that although the signature on exhibit P13 is indeed his signature, his name LEWIS OSI INNIH contradicts the signatory on Exhibit P13 which is COLLINS

MBU. Again, simply because DW 1 did not want to admit that he had signed a document as a MANAGING DIRECTOR of the 1st defendant, he again denied his signature as the maker of the document in exhibit P5 page 63 which document he frontloaded himself in court.

I find that the signatures in Exhibits P5 page 63, P6 and P13 are the same in all the documents alleged and these contradictions raised by the claimant are material and court finds the witness not to be a witness of truth and will not rely on the evidence of the DW1.

"When there are material contradictions in the case of a party the Court, cannot, without credible explanation by evidence, pick and choose which piece of evidence to believe and which piece of evidence not to believe: BOY MUKA v. THE STATE (1976) 10 SC 305. It is not for the Court to provide explanation for inconsistencies in a party's case: **ONUBOGU v. THE STATE (1974) 4 U. l. L. R 538.** That burden falls squarely on the party who will fail without explanation in the circumstances."Per EKO,J.S.C in ***AYORINDE V. KUFORIJI (2022) LPELR-56600(SC) (Pp. 17-18 paras. D).***

As the Supreme Court held per Fabiyi JSC in ***EKE v. THE STATE (2011) 3 NWLR 589*** "for contradictions in the evidence of witnesses to vitiate a decision they must be material or substantial. Such contradictions must be so material to the extent that they cast serious doubts on the case presented as a whole by the party on whose behalf the witnesses testified or as to the reliability of such witnesses. In some minor and inconsequential contradictions which do not seriously relate to the ingredients of the offence charged should not vitiate the case of a party.

The Defendants submitted that they are entitled to adequate compensation from the Claimant in respect of the improvement. Counsel relied on Section 14 of the ROPA. The case of the defendant is ludicrous as they have omitted section 15 of ROPA which states;

"A tenant shall not be entitled to compensation in respect of any improvement, unless he has executed it with the previous consent in writing of the landlord".
Cross examination of PW1.

Ques: I will be correct to say since defendant made 1st payment he has not made any other payment

Ans: They kept claiming they had to deduct some money that they did repairs which we told them no consent from us to conduct repairs because property was in a good condition.

Ques: They painted?

Ans: We painted and when she came she broke the building into two

It is clear that the defendant did not obtain approval in writing from the claimant to make any alterations to the property. There is also no counterclaim to entitle him to compensation.

From the evidence adduced by the defendant, there is no proof in writing that the claimant approved the purported improvements on the property. It is a mandatory provision "shall" and he who asserts must prove. The defendant having failed to prove this assertion I hold that the defendant is not entitled to compensation.

Defendant had argued that the Court is deprived of jurisdiction to entertain this suit as there is no letter of instruction from the claimant authorizing the institution of this suit. Thus counsel lacked the authority to file the suit. There is no letter of instruction to institute the action. Relying on ***COKER V ADETAYO SUPRA @ 625 PARAS C-D.*** Exhibit P10 does not have a letter of instruction backing the institution of the suit in accordance with section 7 of ROPA. There is no denial from the client MABON ESTATES that the legal practitioners were not engaged to recover their premises and this line of argument is against the justice of the case and I rely once again on the apex decision of **PILLARS V DESBORDES (SUPRA).** This court will not sacrifice justice on the altar of technicality. See ***AGBON-OJEME V. SELO-OJEME & ORS (2020) LPELR-49688(CA) (Pp. 21 paras. D).***

It is Defendant counsel's argument that a company acts or takes decisions through its members who must pass a resolution in general meeting as regards any matter that concerns the company hence a sole member of a company cannot institute an action on behalf of the company without a resolution authorizing same. **See *TRENCO (NIG) LTD V. AFRICAN REAL ESTATE AND INVESTMENT COMPANY LTD & ANOR* (1978) LPELR-3264(SC) (Pp. 18**

paras. A) ... The company itself cannot act in its own person, for it has no person; it can only act through directors, and the case is, as regards those directors, merely the ordinary case of principal and agent. Wherever an agent is liable; where the liability would attach to the principal, and the principal only, the liability is the liability of the company."**See Sections 87 and 89 of CAMA**.I find it absurd that the law requires a company to file its board resolution in court to prove the power of the company to sue when it is a juristic person who has power to sue and be sued.

The counsel to the defendant had argued that the procedure under the fast track rule was not properly followed. The provisions in **Order 37 Rule 4 of the High Court Rules** cited by the Defendant is an application which must be addressed to the Chief Judge and not the originating process itself. The chief judge grants the approval and same is forwarded to the fast track judge. From the file before me, the Hon. Chief Judge gave his approval to Form 32 on the 26th day of April, 2023. I am satisfied with same and I so hold.

In addition, the legal personalities of both parties was called into question by both parties. Claimant alleged that the defendant went by AONODODER INVESTMENT LIMITED andAONDOVER INVESTMENTS LIMITED.

On the different names of 2nd defendant; the DW1 stated under cross examination;

Ques: How well and how long have you known 2nd defendant?

Ans: 10 years now.

Ques: Is Mrs Rosemary UrusulaNku her real name?

Ans: yes.

Ques: Does she also go by Rosemary Urusula-Atu?

Ans: Yes.

Ques: Does 2nd defendant also go by name Rosemary Osula-Nku?

Ans: Yes.

Ques: Does 2nd defendant also go by name Rosemary U. Osula?

Ans: Yes.

Ques: Exhibit P7, look at it and tell court owners of the cheque?

Ans: She is a director there.

Ques: And you told court you don't know about name? Look at Exhibit P12 page 3 column III what name is there?

Ans: Rosemary U. Osula

Ques: Does she go by name Rosemary Osula-Mku?
Ans: yes.
Defendants counsel had argued that both the Claimant and the 1st defendant, being unknown to law, lack the capacity to sue and be sued. I find this argument grasping at the straws of technicality as the principle of estoppel by conduct will lay both parties arguments to rest. in ***NASARALAI ENTERPRISES LTD V. ARAB BANK (NIG) LTD (1986) LPELR-1942(SC) (PP. 46-47 PARAS. G) PER BELLO,J.S.C HELD;***

"… the basis of estoppel by conduct is that a person has so conducted himself that it would be unfair or unjust to allow him to depart from a particular state of affairs which another person, who will be affected by the departure, has taken to be settled or correct…"

Both parties knew at every material point in time who they were transacting with and raised no issue as to each other's legal personality and are not allowed to change the goal post to suit their respective positions in this case and I so hold.
In the light of the foregoing, I hold that the claimant has discharged the evidential burden placed on him by virtue of Sections 131, 132 and 133 of the Evidence Act, 2011 as amended.

I hereby order as follows;

a. **Immediate vacant possession to the claimant over the six-bedroom duplex with all the appurtenances lying and situate at No. 53 Usuma Street, Maitama, FCT, Abuja currently being held over by the Defendants forthwith.**

b. **Defendants to pay the sum of ₦35,000,000.00 (Thirty-Five Million Naira only) representing arrears of rent for the period 28th July 2020 to 27th July, 2021 and 28th July 2021 to 27th July, 2022 forthwith.**

c. **Defendants to pay mesne profits assessed at the sum of N2,875,000 (Two Million, Eight Hundred and Seventy-Five Thousand Naira only) per month from 28th July, 2022 till**

judgment is delivered in this suit and thereafter until the Defendants relinquishes possession is granted.

d. 10% interest on the judgment sum from the date of delivery of judgment until the entire judgment sum is fully liquidated is granted.

e. The sum of ₦200,000.00 as cost of this action is granted

HON. JUSTICE NJIDEKA K. NWOSU-IHEME
[JUDGE]

Appearance of Counsel:

- **I. S. IBANICHUKA ESQ FOR CLAIMANT**
- **T. K. ANOSILE ESQ FOR THE DEFENDANTS**