

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

**BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU**  
**COURT CLERKS : JANET O. ODAH & ORS**  
**COURT NUMBER : HIGH COURT NO. 13**  
**CASE NUMBER : SUIT NO: CV/1490/2018**  
**DATE: : FRIDAY 25<sup>TH</sup> OCTOBER, 2024**

**BETWEEN:**

**NDIC (Liquidator of Hallmark Bank Plc)..... PLAINTIFF**

**AND**

**MR. SUNDAY OGAR ..... DEFENDANT**

## **JUDGMENT**

The Plaintiff commenced this action by Writ of Summons and Statement of Claim dated 16<sup>th</sup> April, 2018 and filed on same date wherein they claim as follows:-

1. Declaration that the Plaintiff is entitled to the vacant possession of all the three (3) bedroom flat and all the appurtenances thereto situate and lying at No. 11 Parakou Crescent, Wuse II, Abuja known as flat 6, which the Defendant occupy illegally.
2. An Order evicting the Defendant from all that three (3) bedroom flat and all the appurtenances thereto situate and lying at No. 11 Parakou Crescent, Wuse II, Abuja known as flat 6, which the Defendant occupy illegally.
3. An Order that the Defendant pays to the Plaintiff the sum of N11, 000,000 being damages for use and occupation of all that three(3) bedroom flat and all the appurtenances thereto situate and lying at No. 11 Parakou Crescent, Wuse II, Abuja known as flat 6, which the Defendant occupies illegally at the rate of N1,000,000.00 (One Million Naira) per annum from the 14<sup>th</sup> day of June, 2006 to the 13<sup>th</sup> day of June, 2017.

4. An Order that the Defendant pays to the Plaintiff the sum of N1,000,000.00 (One Million Naira) per annum from the 14<sup>th</sup> day of June, 2017 until the Defendant hands over vacant possession of all that three(3) bedroom flat and all the appurtenances thereto situate and lying at No. 11 Parakou Crescent, Wuse II, Abuja known as flat 6, which the Defendant occupy illegally.
5. An Order that the Defendant pays to the Plaintiff damages in the sum of N5,000,000.00 (Five Million Naira) being General Damages for trespass.
6. The cost of this action.

The case of the Claimant as distilled from Witness Statement on Oath of Jane Lekworth (Assistant Manager in the Legal Department of the Plaintiff) and Statement of Claim is, that;

That in 2006 the banking license of the Bank was revoked by the Central Bank of Nigeria, sequel to which the Nigeria Deposit Insurance Corporation (hereinafter referred to as the Corporation) was appointed as its liquidator. Attached thereto as Annexure 1 is a copy of the Order under the hand of the then Governor of the Central Bank of Nigeria revoking the banking license of the Bank.

That Hall props Estate was a subsidiary of Hallmark Bank Plc. and the legal owner of all that property known as Plot 905 Wuse II, Abuja covered by Certificate of Occupancy No. 1B26W147EZ63 9FRDB10U – 10 known as No.11 Parakou Crescent, Wuse II, Abuja consisting of a block six (6) units of three (3) bedroom flats plus Boy's Quarters (hereinafter referred to as the property). Attached hereto as ANNEXURE 2 is a copy of the Certificate of Occupancy of the said property.

That the Corporation is a body corporate established under the law with perpetual succession and common seal for the purpose of insuring all deposits in licensed banks and all financial Institutions in Nigeria.

That the Corporation is by law saddled with the responsibility of liquidating all failed insured financial Institutions and their subsidiaries. In addition to its statutory responsibility to act as the Liquidator of failed insured financial institutions, the Corporation was also appointed as a Liquidator by an Order of the Federal High Court. A copy of the Order appointing the Corporation as a liquidator of the Bank is attached to the statement of claim as ANNEXURE "3".

That until 2006, the property was sub-let to the National Hospital, Abuja for the accommodation of its staff.

That she knows as a fact that with the advent of the monetization policy of the Federal Government, the National Hospital released the property on the 13<sup>th</sup> day of June, 2006 and moved out all its staff from the property.

That she knows as a fact that by a letter dated the 2<sup>nd</sup> day of October, 2008, the agents managing the property at that time, Messrs Ossy Kamalu & Associates wrote a letter to the National Hospital, Abuja informing it among other things that the Bank had gone into liquidation and the Corporation has been appointed a Liquidator. A copy of the letter is attached to the statement of claim as ANNEXURE 4.

That by a letter dated the 6<sup>th</sup> day of October, 2008, the National Hospital replied ANNEXURE 4 and stated that it has indeed terminated its tenancy over the property in June, 2006. The people living in the house are doing so without the license or authority of the Hospital. A copy of the Hospital's letter is attached to the Statement of Claim as ANNEXURE 5.

That the Defendant has been illegally occupying Flat No, 6 in the property consisting of three bedrooms (Hereinafter the premises)

from the 14<sup>th</sup> day of June, 2006 to date without the license or authority of the Plaintiff and has refused to vacate the premises despite repeated demands.

That in the course of the liquidation of the Bank and its subsidiaries, the Corporation realized that the Defendant had been illegally occupying the premises without the license or authority of the Bank, the Plaintiff or the Corporation.

That by a letter dated the 2<sup>nd</sup> day of August, 2013, the Corporation appointed the Chamber of Mohammed Shuaib as Agents to take over possession of the premises, recover rents from any person occupying the premises and sell it. A copy of the letter is attached to the statement of claim as ANNEXURE 6.

That on inspection, it was discovered that the Defendant is illegally living in the premises without the license or authority of the Plaintiff.

That she knows as a fact that Chambers of Mohammed Shuaib engaged the Defendant in discussions to see how the issue of his illegal occupation can be resolved with a view to legalizing his stay.

That the Defendant, in conjunction with other illegal occupants wrote a letter dated the 13<sup>th</sup> day of September, 2013 to the Chambers of Mohammed Shuaib offering to regularize his stay in the premises and offering to pay the sum of N750,000.00 (Seven Thousand and Fifty Thousand Naira). A copy of the said letter is attached to the statement of claim as ANNEXURE 7.

That by a letter dated the 6<sup>th</sup> day of December, 2013, the Chambers of Mohammed Shuaib conveyed to the Defendant and other illegal occupants the rejection of their offer contained in ANNEXURE 7. A copy of the letter is attached to the statement of claim as ANNEXURE 8.

That again, the Defendant together with the other illegal occupants of the other flats in the property wrote a letter dated the 17<sup>th</sup> day of February, 2014 but delivered on the 25<sup>th</sup> day of February, 2014 pleading that their occupation be regularized and premises be sold to them. A copy of the letter is attached to the Statement of Claim as ANNEXURE 9.

That she knows as a fact that similar flats as the premises in the area wherein the property is situate command a rent of about N2,500,000.00 (Two Million Five Hundred Thousand Naira) per annum.

That the Defendant made an offer for the purchase of the property which was rejected and this was duly communicated to him via letter dated 6<sup>th</sup> December, 2013. A copy of the endorsed copy is attached to the statement of claim as ANNEXURE 8. The Defendant is hereby put on notice to produce the original during trial.

That on the 9<sup>th</sup> December, 2017 a notice of owner's intention to apply to recover possession was issued the Defendant served by the Bailiff of the FCT High Court giving the Defendant (7) Seven days to yield up possession, the Defendant ignored the notice like every other issued in the past. A copy of the said notice together with the Bailiff affidavit of service is attached to the statement of claim as ANNEXURE 10. The Defendant is hereby put on notice to produce the original during trial.

That the Defendant has failed, neglected and/or refused to yield up possession of the said three (3) bedroom flat.

That the Plaintiff is entitled to N1,000,000.00 (One Million Naira) annually for the Defendant's illegal use and occupation of its property for the period commencing from the 14<sup>th</sup> day of June, 2006 to date and thereafter till the Defendant yields up possession or the date the suit is determined.

PW1 tendered the following in evidence;

1. Official Gazette
2. Certificate of Occupancy
3. Court Order
4. Letter dated 2<sup>nd</sup> October, 2008
5. Letter dated 6<sup>th</sup> October, 2008
6. N.D.I.C letter dated 2<sup>nd</sup> August, 2013
7. Letter dated 13<sup>th</sup> September, 2013
8. Re Expression of Interest dated 6<sup>th</sup> December, 2013
9. Letter dated 17<sup>th</sup> February, 2014
10. Notice of Owners Intention to apply to recover possession

All marked Exhibits "1", "2", "3", "4", "5", "6", "7", "8", "9" and "10" respectively.

PW1 was cross-examined and subsequently discharged.

The Defendant opened their defence and called DW1 (Sunday Ogar). The case of the Defendant as distilled from Statement of Defence and Witness statement on Oath of DW1 is, that;

That in answer to paragraphs 5 & 6 of the Statement of claim. The National Hospital Abuja (NHA) had been paying the rent in respect of his flat to the owner and landlord of the property, Hall Props Estates Limited until sometime in 2006 when the Federal Government of Nigeria introduced monetization program and he became responsible for the payment of his rent.

That further to paragraph 4, as soon as the National Hospital Abuja stopped the payment of rent in respect of his flat. He received information that Hallmark Bank Limited had been taken over by Ecobank Plc. under a scheme of arrangement that extinguished the existence of Hallmark Bank Ltd. but he knew and still knows that Hallprops Estates Limited the owner and landlord of the property he's occupying is still existing as a legal entity and has not been wound up.

That he is not in a position to confirm or deny paragraph 11 of the Statement of Claim. The Plaintiff is therefore put to the strictest proof of the averments contained therein.

That in response to paragraph 12, his position is that he is a legal occupant of the premises, who came into the occupation of the property legally and lawfully and no one has ever come to challenge his occupancy or tenancy of the premises.

That in response to paragraphs 13 – 14 of the Plaintiff statement of claim, the essence of their communication with the Plaintiff's lawyer was to express their interests for the outright purchase of the property having been in the lawful occupation of the premises for a very long time and having incurred huge sums of money in putting the premises in a tenatable and habitable condition during the period that no one showed up from Hallprops Estates Limited.

That further to paragraph 10, they played active roles in chasing away miscreants who wanted to take undue advantage of the situation surrounding the property by mounting signboard and bringing different agents to come and value the property, at this point it became very difficult for them who are in lawful occupation of the property to determine who to pay the rent to.

That Hallmark Bank Plc. is not known to him and the other tenants in the premises in issue as they have never been told by anyone from Hallprops Estate Limited that Hallprops Estate Limited is a subsidiary of Hallmark Bank Plc. But they know that Hallprops Estate Limited is a Limited Liability Company duly registered at the Corporate Affairs Commission (CAC) because an online public search conducted by him showed that the company

(Hallprops Estates Ltd.) was registered with Registration Number RC.332609 on the 24<sup>th</sup> day of March, 1998 with registered address at 19, Broadstreet, Lagos. The Certificate of Incorporation of Hallprops Estates Ltd. and/or legal search to be conducted at the Corporate Affairs Commission (CAC) will confirm this.

That the chambers of Mohammed Shuaib claiming to be agents of N.D.I.C never showed him and the other tenants any Court Order to show that indeed N.D.I.C was confirmed as Liquidator of the defunct Hallmark Bank Plc. after N.D.I.C was appointed Provisional Liquidator about 13 years ago in 2006.

That the chambers of Mohammed Shuaib did not show them any document to confirm that the Federal High Court proceeded to hear the main petition for winding up of Hallmark Bank Plc. and whether the Federal High Court made an Order winding up the Bank and confirmed the Provisional Liquidator (N.D.I.C) as a substantive liquidator who can now exercise the powers provided by law for a liquidator to exercise in properly winding up the company.

That Hallprops Estate Limited is the owner of the property at No. 11 Parakou Crescent, Wuse II, Abuja and not Hallmark Bank Plc.

and he never received any Quit Notice or 7 days' Notice of Owner's Intention to proceed to Court for recovery of the property he is occupying at No. 11 Parakou Crescent, Wuse II, Abuja from the Plaintiff nor any of its agents or servants including the Chambers of Mohammed Shuaib.

DW1 tendered the following in evidence;

1. Status Report from Corporate Affairs Commission (CAC).

DW1 was cross-examined and subsequently discharged.

In line with procedure, written address was filed wherein sole issue was formulated for determination to-wit;

***"Whether the Plaintiff has proven its case in Order to be said to have succeeded on the strength of its own case and not on the weakness of the Defendant's case."***

It is the submission of learned counsel, that the Plaintiff must succeed on the strength of its own case and not on the weakness of the Defendant's case. The Plaintiff must proof its case for it to be entitled to the reliefs sought. The Plaintiff must succeed on the strength of its case and not the weakness of the defence.

***NAMMAGI VS. AKOTE (2021) 3 NWLR (Pt. 1762)*** was cited.

Learned counsel submits, that the Plaintiff claims for both possession (forceful eviction) and for damages for the use of the property by the Defendant. However, the claim for possession has been overtaken by event as the Defendant told the Court under oath on 28<sup>th</sup> November, 2022 that he vacated the premises in early 2022.

Learned counsel further submits, that the Defendant denied the averment of the Plaintiff that Hallprops Estates Limited is a subsidiary of the defunct Hallmark Bank Plc. and put the Plaintiff to the proof of that averment (see paragraph 2 of the Defendant's statement of defence dated 9<sup>th</sup> January, 2019) but the Plaintiff failed woefully to prove to this Honourable Court that the said Hallprops Estate Limited which let the premises to the Defendant is a subsidiary of the defunct Hallmark Bank Plc. The Defendant was able to prove the corporate and distinct existence of the said Hallprops Estates Limited by tendering a certified true copy of the Status Report on Hallprops Estate Limited from the Corporate Affairs Commission (CAC) which was admitted and marked as Exhibit "D1". The search (status) Report was generated on the 4<sup>th</sup> October, 2022 which is an indication that Hallprops Estates Limited is still in existence.

Learned counsel also submits, that the Plaintiff could not prove to this Court the nexus between it and the Defendant and how it became the owner of the said property and when the Defendant started staying in the apartment. There is no agreement or document that binds the Plaintiff and the Defendant.

It is the submission of learned counsel, that there is no evidence before the Court to prove that the Defendant and the Plaintiff entered into any agreement binding them as landlord and tenant not to talk about consideration for the payment of rent or to talk of anything to show for how the property was valued to ascertain the extent of the damage by the Defendant. Relationship between a landlord and a tenant is contractual.

***MRS. AISHA ABDULRAHMAN & ORS VS. MRS. SHADE THOMAS (2019) 12 NWLR (Pt. 1685) at 111*** was cited.

Learned counsel further submits, that the purported authority of N.D.I.C to act as the liquidator of Hallmark Bank Plc. is inchoate and the action of N.D.I.C in commencing legal proceedings on behalf of the defunct Hallmark Bank is incompetent. This is because N.D.I.C only has a provisional authority to act as liquidator until the Court (Federal High Court) makes a winding up Order. The Plaintiff herein (N.D.I.C) only tendered the Interim

Order obtained from the Federal High Court Lagos dated 11<sup>th</sup> July, 2006 which clearly shows that "**NIGERIAN DEPOSIT INSURANCE CORPORATION** is appointed as a **PROVISIONAL** Liquidator of **HALLMARK BANK PLC.** pending the hearing and determination of this petition." There is no further document or evidence attached and there is nothing before the Court that the substantive petition was eventually heard and that a winding up Order was made to confirm the appointment of N.D.I.C as the Liquidator of Hallmark Bank Plc.

Learned counsel submits, that the Plaintiff herein (N.D.I.C) cannot use a temporary authority it obtained almost 18 years ago to assume the full powers provided by law under Section 425 of CAMA for a confirmed liquidator who has obtained an Order to wind up a company. The Plaintiff herein has not exhibited or tendered the Order granted by the Federal High Court for a winding up of Hallmark Bank Plc. by it (N.D.I.C).

Counsel submits, that the Plaintiff has not proved its case to have entitled it the reliefs sought because:

The Plaintiff cannot succeed on the weakness of the Defendant's case.

There is no evidence before the Court to prove that the Defendant and the Plaintiff entered into any agreement binding them as landlord and tenant.

The Plaintiff could not prove its authority to act as the owner of the said property.

On their part, Claimant filed written address wherein sole issue was formulated for determination to-wit;

***"Whether the Claimant has made a case entitling it to the reliefs sought?"***

It is the submission of learned counsel, that a Claimant in an action for declaratory reliefs can satisfy this condition by evidence adopted vide a witness statement on oath.

***GE INT'L OPERATIONS (NIG) V.S 1-OIL & GAS SERVICES LTD. (2016)10 NWLR (Pt. 1520) at 304*** was cited.

Learned counsel submits, that in the case of a tenant at will (a tenant whose tenancy has been determined), the law requires the Claimant to serve Form E (Owner's Intention to Recover Possession), see Section 7 of the Recovery of Premises Act. Counsel also submit, that upon discovery of the Defendant's illegal occupation of the property, making the relationship

between him and the landlord that of owner/trespasser. In that instance, the Claimant was enjoined by law to issue and serve Form E. A careful analysis of Exhibit "10" shows that the Claimant has complied with the sine qua non for the invocation of the jurisdiction of this Honourable Court.

Learned counsel submits, that where a tenant fails to pay rent, the basis for being in occupation as a tenant ceases. In the instant case, counsel also submits, that the Claimant is entitled to damages for use and occupation of the property from the 14<sup>th</sup> day of June, 2006 to the 13<sup>th</sup> day of June, 2017 and mense profit from 17<sup>th</sup> June, 2017 until the Defendant yields up possession.

***ODUTOLA VS. PAPERSACK (2006)12 SCNJ Page 188 at 208*** was cited.

After service of the mandatory Form E, the Defendant obstinately refused to yield up possession. It is more bewildering to note that his conduct is aimed at holding over in perpetuity.

Learned counsel further submits, that the contention of the Defendant that the Claimant having not proven its case, cannot succeed on the strength of the weakness of the case of the Defendant is a gross misconception, a defeatist approach and an erroneous consideration of the facts before the Court. The facts

before the Court clearly established that the Claimant was never a tenant of the Defendant or anyone whatsoever at any time whatsoever, and questioning the entitlement of the Defendant is not within his power or right.

It is the submission of learned counsel, that the Defendant who has failed to establish his nexus with the property, who has failed to establish his tenancy relation with the property, who has failed to show this Court that his occupation of the property for years is without any authority or license and who has failed to debunk the claim of the Plaintiff that he is a gross trespasser, cannot be alleging any claim nor interest in the property that can be said to be competing with that of the Claimant, standing to be placed on any scale. More so the Plaintiff does not even have a case at all not to mention being a weak case.

Learned counsel submits, that the Defendant only tendered Exhibit "D1" which is a search report from Corporate Affairs Commission and has not provided any evidence to show the company status. It seems that the Defendant decided to ignore the content of Exhibit "4" where it is clear that Hallprops Estate Limited was a subsidiary of Hallmark Bank Plc. which assets has been transferred to the Claimant.

Learned counsel further submits, that the Court is bound by its record, counsel invite this Court to take a look at the two annexures marked Exhibits "4" and "5" attached to their written address in support of the Claimant's counter affidavit dated the 14<sup>th</sup> day February, 2019, and filed same day in opposition to the Defendant Preliminary Objection which are Court Orders appointing the Claimant as the liquidator of Hallmark Bank Plc. and a vesting order vesting the property in question on the Claimant.

Learned counsel concludes, that on the basis of the evidence both oral and documentary led, it is pellucid that there is preponderance of evidence in favour of the Claimant. To that extent, counsel humbly urge this Honourable Court to grant all the reliefs claimed by the Claimant.

**COURT:-**

I have read and assimilated the respective cases of the Plaintiff and Defendant on the one hand, and the argument encapsulated in the written addresses, on the other hand.

I have read and assimilated the case of Plaintiff. As well as that of the Defendant. The issue ***whether Plaintiff can succeed on***

***the strength of their case and not on the weakness of defence*** has been formulated for determination.

The reliefs claimed by Plaintiff largely are declaratory in nature.. I shall pause at this juncture to establish the position of the law on declaratory reliefs.

Indeed judicial pronouncements are ad-idem that declaratory reliefs are never granted based on admission or on default of filing defence. ***MOTUNWASE VS SORUNGBE (1988) NWLR (Pt. 92) 90.***

Where the court is called upon to make declaration of a right, it is incumbent on the party claiming to be entitled to the said declaration to satisfy the court by evidence and not the admission in pleadings that he is entitled.

The imperativeness of this arises from the fact that the court has discretion to grant or refuse to grant such declaration. ***SAMESI VS. IGBE & ORS (2011) LPELR 4412.***

It is instructive to state here, that the contention between the parties from the evidence before the court dwells on recovery of premises.

From the totality of whole evidence before the court, it seems to me that one basic fact that must be accepted is that both parties claim entitlement to the vacant possession of all the three (3) bedroom flat and all the appurtenances thereto situate and lying at No. 11 Parakou Crescent, Wuse II, Abuja known as flat 6.. and the only issue before me therefore, is to determine the rights of the parties based on available evidence to the subject matter.

The Plaintiff has led evidence before this court, that it is by law saddled with the responsibility of liquidating all failed insured financial Institutions and their subsidiaries. In addition to its statutory responsibility to act as the Liquidator of failed insured financial institutions, they were also appointed as a Liquidator by an Order of the Federal High Court. That until 2006, the property which is subject matter of dispute was sub-let to the National Hospital, Abuja for the accommodation of its staff.

With the advent of the monetization policy of the Federal Government, the National Hospital released the property on the 13<sup>th</sup> day of June, 2006 and moved out all its staff from the property.

By a letter dated the 2<sup>nd</sup> day of October, 2008, the agents managing the property at that time, Messrs Ossy Kamalu &

Associates wrote a letter to the National Hospital, Abuja informing it among other things that the Bank had gone into liquidation and the Corporation has been appointed a Liquidator.

That by a letter dated the 6<sup>th</sup> day of October, 2008, the National Hospital replied above mentioned letter and stated that it has indeed terminated its tenancy over the property in June, 2006. The people living in the house are doing so without the license or authority of the Hospital.

In the course of the liquidation of the Bank and its subsidiaries, the Corporation realized that the Defendant had been illegally occupying the premises without the license or authority of the Bank, the Plaintiff or the Corporation. By a letter dated the 2<sup>nd</sup> day of August, 2013, the Plaintiff appointed the Chamber of Mohammed Shuaib as Agents to take over possession of the premises, recover rents from any person occupying the premises and sell it.

The Defendant, in conjunction with other illegal occupants wrote a letter dated the 13<sup>th</sup> day of September, 2013 to the Chambers of Mohammed Shuaib offering to regularize his stay in the premises and offering to pay the sum of N750,000.00 (Seven Thousand and Fifty Thousand Naira). However, by a letter dated

the 6<sup>th</sup> day of December, 2013, the Chambers of Mohammed Shuaib conveyed to the Defendant and other illegal occupants the rejection of their offer contained in the above mentioned letter.

On the 9<sup>th</sup> December, 2017 a notice of owner's intention to apply to recover possession was issued the Defendant served by the Bailiff of the FCT High Court giving the Defendant (7) Seven days to yield up possession, the Defendant ignored the notice like every other issued in the past.

All the averments above are evidenced by Exhibits '4', '5', '6', '7', '8', and '10'.

Defendant is contending, that as soon as the National Hospital Abuja stopped the payment of rent in respect of his flat. He received information that Hallmark Bank Limited had been taken over by Ecobank Plc. under a scheme of arrangement that extinguished the existence of Hallmark Bank Ltd. but he knew and still knows that Hallprops Estates Limited the owner and landlord of the property he's occupying is still existing as a legal entity and has not been wound up.

Defendant made heavy-weather; that he is a legal occupant of the premises, who came into the occupation of the property legally and lawfully and no one has ever come to challenge his

occupancy or tenancy of the premises. Furthermore, the essence of their communication with the Plaintiff's lawyer was to express their interests for the outright purchase of the property having been in the lawful occupation of the premises for a very long time and having incurred huge sums of money in putting the premises in a tenantable and habitable condition during the period that no one showed up from Hallprops Estates Limited.

Defendant insists, that Hallmark Bank Plc. is not known to him and the other tenants in the premises in issue as they have never been told by anyone from Hallprops Estate Limited that Hallprops Estate Limited is a subsidiary of Hallmark Bank Plc. But they know that Hallprops Estate Limited is a Limited Liability Company duly registered at the Corporate Affairs Commission (CAC) because an online public search conducted by him showed that the company (Hallprops Estates Ltd.) was registered with Registration Number RC.332609 on the 24<sup>th</sup> day of March, 1998 with registered address at 19, Broadstreet, Lagos.

That the chambers of Mohammed Shuaib claiming to be agents of N.D.I.C never showed him and the other tenants any Court Order to show that indeed N.D.I.C was confirmed as Liquidator of the defunct Hallmark Bank Plc. after N.D.I.C was appointed

Provisional Liquidator about 13 years ago in 2006. Also, he never received any Quit Notice or 7 days' Notice of Owner's Intention to proceed to Court for recovery of the property he is occupying at No. 11 Parakou Crescent, Wuse II, Abuja from the Plaintiff nor any of its agents or servants including the Chambers of Mohammed Shuaib.

It is pertinent to note, that Defendant tendered only the **Status Report from Corporate Affairs Commission (CAC)** as evidence to back up all his claims.

It is instructive to state here, that there are different categories of tenancy recognized by the law. These include contractual tenancy, statutory tenancy, tenancy at sufferance or tenancy at will.

Contractual tenancy is the usual or common one that involves agreement between the landlord and tenant, written or oral on the terms and conditions of the tenancy. A statutory tenancy is a creation of statute for the benefit of the tenant and does not depend on the will or acceptance of the landlord or on the existence of a contractual tenancy. Tenancy at sufferance results from initial lawful occupation or possession either by contractual tenancy or license given by the owner or person entitled to the

right of occupancy of premises and occurs when the tenancy or license expires and the tenant or licensee holds over possession.

See the cases of ***FARAJOYE VS HASSAN (2006) 16 NWLR (Pt. 1006) PG. 487, Paragraphs A-D;***

***PAN ASIAN-AFRICAN CO. LTD. VS NATIONAL INSURANCE CO. (1982) FNR 360, (1982) 9 SC. 1;***

***AFRICAN PETROLEUM VS OWODUNNI (1991) 8 NWLR (Pt .210) 391;***

***ODUYE VS NIG. AIRWAYS (1987) 2 NWLR (Pt. 55) 126;***

***EZENWA VS OKO (1999) 14 NWLR (Pt. 637) 95.***

Where tenancy relationship between landlord and tenant is governed by Tenancy Agreement, the said tenancy becomes contractual which is subject to the terms and condition therein contained.

In the instant case, Defendant here whose tenancy has been determined, is a tenant at will. Upon the discovery of the Defendant's occupation from the 14<sup>th</sup> day of June, 2006 to date without the license or authority of the Plaintiff and refusal to vacate the premises despite repeated demands, relationship of

both parties is now that of owner/trespasser. The requirement of the law in this regard is for the Claimant to serve Form E (Owner's Intention to Recover Possession). Section 7 of the Recovery of Premises Act is most instructive here.

After service of the mandatory notice vide Exhibit '10', however, the Defendant refused to yield up possession.

The veracity and accuracy of all the averments above were not sufficiently discredited by Defendant throughout the trial.

Indeed, trial court has the onerous duty of considering all documents placed before it in the interest of justice. It has a duty to closely examine documentary evidence placed before it in the course of its evaluation and comment and or act on it. Document tendered before a trial court are meant for scrutiny or examination by the court, documents are not tendered merely for the sake of tendering but for the purpose of examination and evaluation ***OMEGA BANK (NIG) PLC VS O.B.C LTD (2002) 16 NWLR (Pt. 794) 483.***

It is settled law that where there are oral as well as documentary evidence, documentary evidence should be used as hanger from which to assess oral testimony. ***PASHAMNU VS ADEKOYA (1974) 6 S C 83.***

The trial court is enjoined to give more weight to the documentary evidence rather than oral testimony. This is because oral evidence may tell lie but documentary evidence which is shown to be genuine does not tell lie.. See ***UDERAH VS NWAKONOB I (2003) 4 NWLR (Pt. 811) 643 at 678 Paragraphs A-C.***

I am in total agreement with the submission of learned counsel for the Plaintiff to the extent of the decision in the case of ***ALHAJI J. A. ODUTOLA VS PAPERSACK Nigeria Limited (2006) 18 NWLR [PT. 1012] 470 at 474 ratio 1 & 4, (2007) W.R.N 1.***

Consequently, I hereby make the following orders:-

- A. Relief 1, i.e Declaration that the Plaintiff is entitled to the vacant possession of all the three (3) bedroom flat and all the appurtenances thereto situate and lying at No. 11 Parakou Crescent, Wuse II, Abuja known as flat 6, which the Defendant occupy illegally **is hereby granted.**
- B. Reliefs 2, 3 and 4, are granted as follows;
  1. An Order evicting the Defendant from all that three (3) bedroom flat and all the appurtenances thereto situate

and lying at No. 11 Parakou Crescent, Wuse II, Abuja known as flat 6, which the Defendant occupy illegally **is hereby granted.**

2. An Order that the Defendant pays to the Plaintiff the sum of N11, 000,000 being damages for use and occupation of all that three (3) bedroom flat and all the appurtenances thereto situate and lying at No. 11 Parakou Crescent, Wuse II, Abuja known as flat 6, which the Defendant occupies illegally at the rate of N1,000,000.00 (One Million Naira) per annum from the 14<sup>th</sup> day of June, 2006 to the 13<sup>th</sup> day of June, 2017 **is hereby granted.**
  
- C. An Order that the Defendant pays to the Plaintiff the sum of N1,000,000.00 (One Million Naira) per annum from the 14<sup>th</sup> day of June, 2017 until the Defendant hands over vacant possession of all that three(3) bedroom flat and all the appurtenances thereto situate and lying at No. 11 Parakou Crescent, Wuse II, Abuja known as flat 6, which the Defendant occupy illegally **is hereby granted.**

**Relief 5 is on Damages.**

General damages are those damages which the law implies in every breach and in every violation of a legal right.

It is the loss which flows naturally from the Defendant's act and its quantum need not be pleaded or proved as it is generally presumed by law. General damages can be assessed from the opinion and judgment of a reasonable person from the circumstances of the case.

See ***ACME BUILDERS LTD. VS. KADUNA STATE WATER BOARD & ANOR (1999) LPELR – 65 (SC).***

Accordingly, I hereby award the sum of N1,000,000.00 (One Million Naira) only in favour of the Plaintiff against the Defendant... as general damages for trespass.

Cost of this suit is assessed at N500,000.00 (Five Hundred Thousand Naira).

Above is my judgment.

***Justice Y. Halilu  
Hon. Judge  
25<sup>th</sup> October, 2024***

## **APPEARANCES**

Nurudeen Buhari, Esq. – for the Claimant.

Defendant not in Court and not represented.