

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 16TH DAY OF MARCH, 2022.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.
SUIT NO.: -FCT/HC/CV/1546/20

BETWEEN:

ALHAJI TUKUR JARI:.....CLAIMANT

AND

**1) MABRIS GLOBAL SERVICES LTD }
2) OCHIUGU INNOCENT } :.....DEFENDANTS**

Queen Bakoholds the brief of Muawiya Yunusa for Claimant.
Defendant unrepresented.

JUDGMENT.

The Claimant by a Writ of Summons dated and filed the 12th day of May, 2020, brought this action against the Defendants, praying the Court for the following reliefs;

1. A declaration that the refusal of the 1st Defendant to yield up the demised premises after the expiration of the tenancy on 9th June, 2019 contrary to the terms of the tenancy is an unconscionable breach of the tenancy.
2. A declaration that the 1st Defendant's tenancy was validly determined on the 9th of March, 2019 by reason of effluxion of time and the subsequent seven (7) Days' Notice of Owner's Intention to Recover Possession issued.
3. An Order directing the 1st Defendant or any person in occupation of the property pursuant to the tenancy between the Claimant and the 1st Defendant to forthwith quit and deliver up possession of the property situated at

No. 4, Imo Street, Suncity Estate; Abuja, FCT, the subject matter of this suit to the Claimant.

4. A declaration that the 1st Defendant is now a tenant at will after the expiration of the tenancy on 8th March, 2029 (sic) and the owner is entitled to immediate possession of the property.
5. An Order directing the Defendants to pay (the) sum of N5,150,000.00 (Five Million, One Hundred and Fifty Thousand Naira) being the outstanding balance of rent for the use and occupation of the property situated at No. 4, Imo Street, Suncity Estate; Abuja, by the Defendants from 9th June, 2017 to 8th June, 2019.
6. And Order of Court compelling the Defendants to pay the sum of N333,333 (Three Hundred and Thirty-Three Thousand, Three Hundred and Thirty-Three Naira) per month as mesne profit on the property from 9th June, 2019 till the determination of this suit.
7. An Order of Court directing the Defendant to pay the sum of N333,333 (Three Hundred and Thirty-Three Thousand, Three Hundred and Thirty-Three Naira) as mesne profit on the property from the date of judgment till the date of vacant possession is eventually handed over to the Claimant.
8. N500,000.00 (Five Hundred Thousand Naira) only, as cost of this suit.
9. 15% interest on the entire judgment sum until judgment sum is finally liquidated.
10. Such further Order(s) as this honourable Court may deem fit to make in the circumstances.

The claim of the Claimant, as per his statement of claim is that on the 2nd day of June, 2014, he entered into a tenancy agreement with the 1st Defendant in respect of his property

situate at No. 4, Imo Street, Suncity Estate; Abuja. That the 2nd Defendant, being the Executive Director, and alter ago of the 1st Defendant, personally handled the tenancy transaction, and also resides in the demised property with his family.

The Claimant averred that by the terms of the tenancy, the agreed rent for the demised premises, is N4,000,000.00 (Four Million Naira) only per annum. That the 1st Claimant paid three years rent directly to the Claimant for 9th June, 2014 to 8th June, 2015, 9th June, 2015, to 8th June, 2016, and 9th June, 2016 to 8th June, 2017.

The Claimant stated that from the 9th of June, 2017 to the 8th of June, 2018, the Defendants only paid the sum of N2,850,000 (Two Million, Eight Hundred and Fifty Thousand Naira) only out of the N4,000,000 (Four Million Naira) rent, as agreed by the parties in the tenancy agreement.

Also, that the yearly rent for the 9th of June, 2018 to 8th of June, 2019 has been unpaid, thus resulting in an outstanding rent of the sum of N5,150,000 (Five Million, One Hundred and Fifty Thousand Naira) only, representing N1,150,000.00 being balance of rent for the period of 9th June, 2017 to the 8th of June, 2018, and N4,000,000.00 being the rent for the use and occupation of the property by the Defendants from 9th June, 2018 to the 8th of June, 2019.

The Claimant further averred that after the determination of the Tenancy Agreement between him and the Defendants on the 8th of June, 2019 by effluxion of time, the Defendants refused to vacate the demised premises or to renew the tenancy. That on the 10th of July, 2019, the 2nd Defendant while acknowledging his indebtedness to the Claimant, voluntarily and unequivocally wrote an undertaking to pay the outstanding amount of N5,150,000.00 by the 31st of December, 2019. That despite the

said undertaking, the Defendants still failed and/or refused to honour same; and that despite letters of demand and reminders sent by the Claimant, the Defendants flagrantly refused to pay the outstanding sum or to vacate the premises.

The Claimant averred that his solicitors issued a statutory 7 Days' Notice of Owner's Intention to recover possession dated March 9, 2020 to the Defendants, in spite of which the Defendants have defiantly refused to yield possession of the demised premises and have also refused to pay the outstanding sum due to the Claimant, hence this action.

At the hearing of the case, the Claimant adopted his Witness Statement on Oath as he testified as PW1, thereby affirming the averments in the Statement of Claim. He also tendered the following documents in evidence:

1. Tenancy Agreement – Exhibit PW1A.
2. Letter of undertaking – Exhibit PW1B.
3. Notice of Owner's Intention to Apply to Recover Possession – Exhibit PW1C.

The Defendants were duly served with the process in this suit as well as hearing notices, but they failed to either enter appearance to the suit or to defend same. Consequently, their right to so defend the suit was on the Claimant's application, foreclosed. The Claimant subsequently filed and adopted his final written address, wherein his learned counsel, Mu'awiya Yunusa, Esq, raised a sole issue for determination, to wit;

“Whether having regards to the material evidence placed before this honourable Court, the Claimant has discharged the burden of proof placed on him by law to prove his case against the Defendants on the

balance of probability to be entitled to the reliefs sought in the Claimant's writ of summons and statement of claim?"

Proffering arguments on the issue so raised, learned counsel contended that the pleadings and evidence as presented by the Claimant before this Court, have not been challenged by the Defendants even though the Defendants were put on notice of every proceedings of this Court. He posited that by refusing to file a defence to the Claimant's suit, the Defendants impliedly admitted the Claimant's claims. He referred to **UNIC Insurance PLC v. Adisa Fadeyi & Ors (2018) LPELR-45571(CA).**

He submitted that the law is settled that uncontroverted evidence is deemed to be true and the Court is bound to act on it. He referred **MTN Nig Communication Limited v. Corporate Communication Investment Limited (2019) LPELR-47041(SC); Idehen & Ors v. Adesanya (2020) LPELR-51331(CA).**

He urged the Court to hold that the Claimant has proved his case against the Defendants on preponderance of evidence and to grant all the reliefs sought by the Claimant against the Defendants.

In the determination of this suit the issue for consideration is **whether the Claimant has established his case as to be entitled to his claims before this Court?**

The law is settled that a Claimant must discharge the onus of proving his case with credible evidence before he can be entitled to his claims. In **Ayeni v. Adesina (2007) 7 NWLR (Pt.1033) 233 at 264,** the Court of Appeal, per Msehelia, JCA, held that;

“It is trite law that he who asserts or claims a relief must prove it by credible admissible evidence, and judgment for and grant of such claims must be based on legal evidence of the highest probative value and weight.”

The onus of proof in civil cases is however, not static. When a Claimant on whom the onus of proof primarily lies, adduces evidence in proof of his case, the onus shifts to the defendant against whom judgment would be given if no more evidence is adduced.

Thus in **Divine Ideas Ltd v. Umoru (2007)All FWLR (Pt.380) 1468 at 1505**, the Court of Appeal, per Omoleye, JCA held that:

“By virtue of the provisions of Section 137 of the Evidence Act, the burden of first proving the existence or non-existence of a fact in a civil case lies on the party against whom the judgment of the Court will be given if no sufficient or evidence at all or no further evidence is produced on either side, regard being had to any presumption that may arise on or from the pleading. If such a party adduces evidence which is accepted and which establishes a ‘prima facie case’ of such a fact, then the burden shifts on to the other party against whom judgment would be given if no more evidence were adduced...”

The Claimant herein has led evidence which prima facie, established his claim against the Defendants. The Defendants on the other hand, have failed to place any evidence on their side of the scale of justice despite the ample opportunity they had to do so. In the circumstances therefore, the Claimant’s claims remain uncontested and uncontroverted.

In **Musa &Ors v. Yerima&Anor (1997)LPELR-1928(SC)**, the Supreme Court, per Onu, JSC, held that;

“It is trite law that where a Plaintiff adduces oral evidence which establishes his claim against the defendant in terms of the writ and the evidence is not rebutted by the Defendant, the Plaintiff is entitled to judgment.”

From the evidence adduced by the Claimant in this case, I am satisfied that the Claimant has made out a case as to be entitled to his claims. The said evidence having not been rebutted or controverted by the Defendants, this Court, on the basis of the foregoing authority, holds that the Claimant is entitled to judgment in this suit.

Accordingly, judgment is entered for the Claimant as follows;

1. It is declared that the refusal of the 1st Defendant to yield up the demised premises after the expiration of the tenancy on 9th of June, 2019 contrary to the terms of the tenancy, is an unconscionable breach of the tenancy.
2. It is declared that the 1st Defendant's tenancy was validly determined on the 9th of June, 2019 by reason of effluxion of time and the subsequent seven (7) Days' Notice of Owner's Intention to Recover Possession issued and served.
3. The 1st Defendant, or any person in occupation of the property pursuant to the tenancy agreement between the Claimant and the 1st Defendant, is ordered to forthwith quit and deliver up possession of the property situate at No. 4, Imo Street, Suncity Estate; Abuja, FCT, the subject matter of this suit to the Claimant.
4. It is declared that the 1st Defendant is now a tenant at will after the expiration of the tenancy on 8th June, 2019 and

the Owner is entitled to immediate possession of the property.

5. The Defendants are ordered to pay the sum of N5,150,000.00 (Five Million, One Hundred and Fifty Thousand naira) being the outstanding balance of rent for the use and occupation of the property situate at No. 4, Imo Street, Suncity Estate; Abuja, by the Defendants from 9th June, 2017 to 8th June, 2019.
6. The Defendants are ordered to pay to the Claimant, the sum of N333,333 (Three Hundred and Thirty-Three Thousand, Three Hundred and Thirty-Three Naira) per month as mesne profit on the property from 9th June, 2019 till the determination of this suit.
7. The Defendants are ordered to pay to the Claimant, the sum of N333,333 (Three Hundred and Thirty-Three Thousand, Three Hundred and Thirty-Three Naira) as mesne profit on the property from the date of the judgment till the date vacant possession is eventually handed over to the Claimant.
8. Cost of N300,000.00.
9. 5% interest on the entire judgment sum until same is fully liquidated.

HON. JUSTICE A. O. OTALUKA
16/3/2022.

