

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON MONDAY 19TH JULY 2021
BEFORE HIS LORDSHIP: HON JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 9 MAITAMA – ABUJA

SUIT NO: FCT/HC/CV/202/19
FCT/FT/CV/59/19

BETWEEN:

BACAB PROPERTIES LIMITED... .. CLAIMANT

AND

1. COLVI LIMITED (STUDIO 24)
2. ADA ELIAZ COUTURE
3. JUST MIMMS SALOON
4. BEAUTIFUL BABIES
5. TREND & STUFF HOME GOODS
6. HAPPY FEET
7. LUXOR SALON & SPA
8. ELBOGIE
9. ELECTRICALS
10. WINE SHOPS
11. ROOTS & BREW
12. DANATELLO INTERIORS
13. ESSENCE FURNITURES & INERIORS LTD.
14. ALIVE PHARMACY & STORES
15. WAK & CHOP
16. WINDOW STYLING LIMITED

DEFENDANTS

JUDGMENT

The Claimant is the lessor of the premises comprising a *5 Bedroom Duplex with 2 Room Boys' Quarters*, situate at *Plot 792B, Adetokunbo Ademola Crescent, Wuse II, Abuja*. Her case is that she leased the said premises to the 1st Defendant for a term of 15 years upon terms set out in the Lease Agreement executed on 1st April, 2012. The 1st Defendant is alleged to have breached and violated the terms of the lease, by under-letting some parts thereof to the 2nd – 16th Defendants without the prior consent of the Claimant; and by also failing to pay the rent reserved on the demised premises at the agreed periods.

Being aggrieved by the 1st Defendant's alleged continued violation of the terms of the Lease Agreement between the two parties, the Claimant instituted the present action, *vide Writ of Summons and Statement of Claim* filed in this Court on 31/10/2019, and later

amended by order of Court of 04/12/2019, wherein she claimed against the Defendants, the reliefs set out as follows:

- 1. A declaration that the Claimant is entitled to determine the lease agreement on account of persistent breach of terms of the lease agreement.***
- 2. An order terminating the Lease Agreement made between the Claimant and the 1st defendant on 1st April, 2012.***
- 3. An order directing the 1st Defendant to pay the Claimant the sum of ₦60,000,000.00 being the rent payment due as at the time of this action in addition to such sum as may be found due to the Claimant per paragraph 16 hereof by the Court on the day of delivery of judgment in this case.***

- 4. An order directing the 1st Defendant to vacate the premises and hand over possession of the premises to the Claimant forthwith.**

- 5. An order directing the 2nd – 16th Defendants to henceforth pending maturity of their various sub leases with the 1st Defendant, pay their yearly rent to the Registrar of this Court who will now pay the Claimant the rent as due as agreed in the lease agreement made between the Claimant and the 1st defendant or as may be ordered by this Court and thereafter pay the balance, if any to the 1st Defendant.**

- 6. An order directing the 2nd – 16th Defendant to vacate the premises and hand over vacant possession of the premises to the Claimant upon expiration of their current sub tenancies with the 1st Defendant.**

It is borne by the records of the Court that the Defendants were duly represented by learned counsel in the course of proceedings; but failed to file a defence to the action. It is further borne by the records that in the course of proceedings, parties sought to settle the matter amicably, which pursuit did not eventually yield any fruitful result.

Nevertheless, the matter proceeded to trial. In proof of her case, the Claimant fielded a sole witness, one **Matthew Aregbe**, her employee. He adopted his *Statement on Oath*, deposed to on 06/12/2019, as his evidence – in – chief in support of the Claimant’s case. He further tendered a total of twenty one (21) sets of documents in evidence as exhibits; and in the absence of the Defendants to subject the witness to any cross-examination, the witness was discharged and Claimant closed her case.

In view also of the Defendants' failure to file their defence to the action, the Court thereafter ordered parties to file and exchange their written final addresses as prescribed by the provisions of the **Rules** of this Court.

Expectedly, only the Claimant filed a written address. In the said address filed on her behalf on 16/02/2021, by **Adekola Mustapha, Esq.**, of counsel for the Claimant, framed a sole issue for determination in this suit, namely:

Whether having regard to the circumstances of this case, the Claimant is entitled to judgment per the reliefs sought before the Court?

In determining this issue therefore, I have also carefully read and given proper consideration to the written address of the Claimant's learned counsel; and whenever it is considered necessary in the course of this Judgment, I shall make reference to his submissions.

As a preliminary point, it is pertinent to consider the legal implication of the failure of the Defendants to join issues with the Claimant upon her claim, by failing to file a defence thereto.

The position of the law is well settled that where an adversary fails to adduce evidence to be placed on the other side of the imaginary scale of justice in an action, minimum legally admissible evidence adduced by the other side will suffice to prove his case. Thus, where a Defendant refuses to defend an action, as in the instant case, the trial Court is entitled to proceed to find for the Claimant, in the event that the evidence adduced by him has satisfactorily established his claim as endorsed. See Newbreed Organization Limited Vs. Erhomosele [2006] 5 NWLR (Pt. 974) 499; NEPA Vs. Inemech [2002] 11 NWLR (Pt. 778) 397; Malle Vs. Abubakar [2007] All FWLR (Pt. 360) 1569.

Proceeding on the footing of this legal principle therefore, the task the Court is to undertake now is to examine the evidence on record as adduced by the Claimant's sole witness; and the law applicable thereto, in order to determine whether or not such evidence has satisfied the requirement of proof imposed by the provisions of **sections 131 and 132 of the Evidence Act** (as amended), to substantiate her claim as endorsed.

RESOLUTION OF SOLE ISSUE

The Claimant's case, as told by her sole witness, seems straightforward. The Claimant, as landlord, leased the demised premises to the 1st Defendant for a term of 15 years certain, upon Lease Agreement made of 1st April, 2012; but which took effect from 1st July, 2012. The **CW1** tendered in evidence, letter of offer of the premises to the 1st Defendant, dated 13th February, 2012; and the original Lease Agreement executed

between the two parties, as **Exhibits C1** and **C2** respectively.

The salient terms of the Lease Agreement, as relevant to the proceedings in this suit; and on which the **CW1** gave evidence, are that:

- 1.The 1st Defendant shall pay yearly rent of **₱20,000,000.00** which is subject to increment of not more than **20%** of the initial rent in the first **5 years** of the term granted.
- 2.The lease is further subject to another rent increment of not more than **50%** of the initial rent for the period of **5th – 10th year** of the term granted.
- 3.The 1st Defendant shall pay an initial rent of **₱40,000,000.00** for the initial two year period of the term granted. (**clause 1(a)** and **(b)** of the Lessee's covenants with the Lessor in **Exhibit C2**).

4.The Lessee (1st Defendant) shall not assign, underlet, charge or in any way part with possession of the demised premises or any part thereof without the prior consent of the Lessor. **(clause (g)** of the Lessee's covenants with the Lessor in **Exhibit C2**).

5.The Lessee (1st Defendant) shall not use the premises for a club house or for the sale of any kind of alcoholic drinks or beverages. **(clause (l)** of the Lessee's covenants with the Lessor in **Exhibit C2**).

6.Where the Lessee fails or neglects to perform or observe any of the covenants and conditions contained in the Lease Agreement, the Lessor shall inform the Lessee of the breaches in writing; after which the Lessor shall be entitled to deem the Lease Agreement as terminated and re-enter

the same or any part thereof. (**clause (2)** of Lessor's covenants with the Lessee in **Exhibit C2**).

7. Where the agreed rent or any part thereof shall be in arrears, whether legally demanded or not; and in the event of any breach or non-observance of the terms of the Lease Agreement, the party in default shall be requested to remedy the breach within a reasonable time, failing which the Lessor may terminate the Lease after serving written notice of termination on the Lessee for such a period of time at the Lessor's discretion. (**clause (5)** of Lessor's covenants with the Lessee in **Exhibit C2**).

The long and short of the testimony of the **CW1** is that by the expiration of the initial two (2) years of the term granted, the 1st Defendant had caused portions of the premises to be partitioned and sublet same to different individuals, including the 2nd – 16th Defendants,

contrary to the terms of the Lease Agreement; and further that apart from the initial sum of ~~N40,000,000.00~~ paid for the initial two year period, the 1st Defendant began to default in payment of rents for the subsequent years, contrary to the terms of the Lease Agreement. The **CW1** tendered in evidence as **Exhibits C3 – C10** respectively, letters exchanged between the Claimant and the 1st Defendant, spanning the period 5th August, 2015 and 16th May, 2017, showing the inconsistencies of the 1st Defendant in making payment of rents on the demised premises. The **CW1** also tendered in evidence as **Exhibits C15 – C21** respectively, cheques issued by the 1st Defendant to the Claimant at various times between 30/01/2015 and 31/03/2018, purporting to pay rent on the demised premises, which cheques were returned unpaid on the grounds, according to the **CW1** and as indicated variously on the cheques, of lack of funding of drawer's account at the material periods.

The **CW1** further testified that the Claimant formally notified the 1st Defendant of the breaches of the Lease Agreement, as highlighted in the foregoing. He tendered in evidence as **Exhibit C11**, the Claimant's Solicitor's letter to the 1st Defendant, dated 18th July, 2017, by which the Claimant brought to the 1st Defendant's attention, the breaches of the terms of the Lease Agreement committed by the 1st Defendant, which were that she sublet part of the demised premises without the Claimant's prior consent; that she permitted liquor to be sold in the premises; and that she failed to pay arrears of rent as at when due. On these bases, the Claimant demanded that the 1st Defendant vacated the premises at the end of the 2017/2018 term.

The **CW1** further tendered in evidence as **Exhibit C12A** another letter written by the Claimant's Solicitor on 15/12/2017, to the 1st Defendant, as a follow up to the earlier letter, **Exhibit C11**.

The **CW1** further testified that as at the time of filing the instant action, the 1st Defendant was in arrears of rent in the sum of **₦24,000,000.00** for the period 30th June, 2018 to 1st July, 2019. He tendered in evidence as **Exhibit C13**, letter dated 23rd April, 2019, written by the Claimant to the 1st Defendant to demand for payment of arrears of rent for the tenancy year 1st July, 2018 to 30th June, 2019 in the sum of **₦24,000,000.00** and to further inform the 1st Defendant of her intention to activate **clause 1(b)** of **Exhibit C2**, by increasing annual rent payable on the demised premises to **₦36,000,000.00** as from 1st July, 2019.

The **CW1** further testified that the 1st Defendant put the 2nd – 16th Defendants in occupation of various partitioned portions of the premises where they continue to carry on businesses without the Claimant's consent; and that being aware that whatever action the

Claimant takes against the 1st Defendant will ultimately affect the interest of the 2nd to the 16th Defendants, the Claimant wrote letters to the said 2nd – 16th Defendants to intimate them of the implication of the 1st Defendant's breach of the Lease Agreement by subletting the premises to them severally. Acknowledged copies of the letters were admitted in evidence as **Exhibits C14, C14A-C14G** respectively.

The **CW1** further testified that the Claimant activated the rent review clause as contained in the Lease Agreement and increased the rent on the demised premises from ~~₱~~**24,000,000.00** which was the rent per annum, as at 2019, to the sum of ~~₱~~**36,000,000.00** per annum, from the 2019/2020 tenancy year.

From the totality of the unchallenged evidence of the **CW1**, the Claimant has firmly established the facts set out as follows:

1. That she leased the demised premises to the 1st Defendant for a term of 15 years from 1st July, 2012 to 30th June, 2027 at the rate of **₦20,000,000.00** per annum in the first instance; subject to rent review after **5 and 10 years** respectively.
2. That the 1st Defendant paid the initial rent of **₦40,000,000.00** for the first two years.
3. That the 1st Defendant breached **clause (g)** of the Lessee's covenants with the Lessor in **Exhibit C2**, by subletting portions of the premises to the 2nd – 16th Defendants without the Claimant's knowledge and consent.
4. That the 1st Defendant permitted liquor to be sold in the premises contrary to **clause (l)** of the Lessee's covenants with the Lessor in **Exhibit C2**.

5. That the 1st Defendant failed to pay the agreed rent on the demised premises as at when due thereby breaching **clause (5)** of the Lessor's covenant under the Lease Agreement, **Exhibit C2**.

6. That the Claimant duly gave the 1st Defendant formal notice of the breaches highlighted by evidence on record.

7. That the 1st Defendant has been in arrears of rent as from the tenancy year commencing from 1st July, 2019.

8. That the Claimant duly served on the 1st Defendant, notice of her intention to foreclose the Lease Agreement and recover possession of the premises.

Now, before a tenancy or lease could be determined in accordance with the law, the nature of that tenancy must first be established. It is trite that a tenancy,

whether at will or for any term, could be determined, as clearly provided by the provision of **section 7** of the **Recovery of Premises Act**, either by agreement of parties, by operation of law by way of service of relevant notice to quit; or by any other means not so specifically stated.

In the present case, the Claimant and the 1st Defendant subscribed to and executed a Lease Agreement, **Exhibit C2**, which sets out the terms of their contractual relationship. **Clauses (2) and (5)** of the Lessor's covenants with the Lessee in **Exhibit C2** gives the Claimant the right to terminate the lease, even before the expiration of the term granted, where there is a breach of terms thereof.

The evidence on record is further that the 1st Defendant committed fundamental breach of **Exhibit C2** which gives the Claimant the right of action for the lease to be forfeited.

The position of the law is further that a breach of a covenant of a lease agreement is a ground for forfeiture and that where the Lessor applies to Court, forfeiture will be granted accordingly. See Ude Vs. Nwara [1993] 2 NWLR (Pt. 278) 638(SC).

There is also evidence on record that, as required under **Exhibit C2**, the Claimant brought the alleged breaches of the agreed terms of the Lease Agreement to the 1st Defendant's notice, which thus entitled her to approach the Court to seek termination and forfeiture of the Lease Agreement.

As for the 2nd – 16th Defendants, there is nothing on the record that they entered the demised premises by lawful means in that there is no evidence that the Claimant authorized their occupation of the demised premises. As such, the law regards them as squatters and they require no notice to be evicted from the premises. See Elakhame Vs. Osemobor [1991] 6 NWLR

(Pt. 196) 170; Ofodile Vs. Commissioner of Police (Anambra) [2001] 3 NWLR (Pt. 699) 139; Olusile Vs. Maiduguri Metropolitan Council [2004] 4 NWLR (Pt. 863) 290.

On the basis of the unchallenged evidence on record and the foregoing analysis, therefore, I hold that the Claimant has satisfactorily established her case against the Defendants and is entitled to judgment as claimed.

Without any further ado, I hereby resolve the sole issue for determination in this suit in favour of the Claimant and I hereby enter judgment in her favour against the Defendants on the terms set out as follows:

1. It is hereby declared that the Claimant is entitled to determine the unexpired Lease Agreement entered to with the 1st Defendant with respect to the premises comprising of 5 Bedroom Duplex with 2 Room Boys' Quarters, being Plot 792B, Adetokunbo Ademola Crescent, Wuse II, Abuja, on

account of the 1st Defendant's persistent breach of fundamental terms of the said Lease Agreement.

2.It is hereby ordered that the Lease Agreement executed between the Claimant and the 1st Defendant on 1st April, 2012, shall be and is hereby terminated forthwith.

3.The 1st Defendant is hereby ordered to deliver up vacant possession and vacate the demised premises within fourteen (14) days of the date of this judgment.

4.The 1st Defendant is hereby further ordered to pay to the Claimant forthwith the total sum of ₦60,000,000.00 (Sixty Million Naira) only, representing arrears of rent for period 1st July, 2018 to 30th June, 2019 (₦24,000,000.00); and the period 1st July, 2019 to 30th June, 2020 (₦36,000,000.00).

5. It is hereby further ordered that the 1st Defendant shall pay to the Claimant, as mesne profits, the prorated sum of ₦3,000,000.00 (Three Million Naira) only, per month, from 1st July, 2020, until the 1st Defendant finally gives up possession of the premises.

6. The 2nd – 16th Defendants, being adjudged squatters on the premises, are hereby ordered to vacate the premises within fourteen (14) days of the date of this judgment.

7. Relief (5) of the Claimant's claim is hereby refused.

8. I make no orders as to costs.

OLUKAYODE A. ADENIYI
(Presiding Judge)
19/07/2021

Legal representation:

Adekola Mustapha, Esq. (with A. Ayopemi (Miss)) – for the Claimant

Henry Endeley, Esq. – for the Defendants