nIN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

DATED THIS TUESDAY THE 11TH DAY OF JULY, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFA

SUIT NO: FCT/HC/CV/1071/2023

BETWEEN:

BLUE BAY PROCUREMENT LIMITED .....APPLICANT

AND

SAFIYA FAROUK SAID……...DEFENDANT

JUDGMENT

The claimant by a writ of summons dated the 16th December, 2022 and filed the same date, claims the following reliefs against the defendant.

1. **Order directing the defendant to deliver up vacant possession of the maisonette with separate guest wing and maids quarters know as plot 4069, Cadastral zone A04, Asokoro E, Abuja.**

2. **The sum of N2,500,000.00 (Two Million Five Hundred Thousand Naira) per month, being mesne profit beginning from the 1st of November, 2022 till vacant possession is delivered.**

3. **10% interest of the above sum until same is completely liquidated.**

4. **An such orders that this court may deem fit to make in the circumstance of this case.**

Accompanying the writ are statement of claim of 3 pages, statement on oath of ChukwumaDafeof 3 pages, certificate of pre-action counselling and list of witnesses and annexure marked as exhibit A, being the tenancy agreement between Blue Bay, procurement Ltd (Lanlord) and SafiyaSaid (Tenant) dated the 18th February, 2019.

The defendant on receivingthe claimant's writ of summons filed a memorandum of conditional appearance dated the 8th February, 2023, alongside with the defendant's statement of defence, dated the 13th March, 2023, together with the witness statement on oath of Safiya Farouk Said of 3 pages dated the 14th March, 2023.

On receivingthe Defendant's statement of defence, the claimant filed the claimant's reply to the defendant's statement of defence of 2 pages, and the claimant's additional witness statement on oath dated the 15th day of March, 2023 of 2 pages.

The defendant who was out of time before filing his statement of defence filed a motion on notice dated the 13th March, 2023 for an order extending the time within which to file the defendant/applicant statement of defence, witness statement of defence, witness statement on oath already filed and served.

This motion with M/6023/2023 was dated the 16/3/2023 and the order therein was granted.

On the 13-2-2023 this matter was mentioned and adjourned to 2-3-2023 for hearing. On the 2-3-2023, both parties were in court with their counsel. where on this date the claimant counsel informed this court that this matter was adjourned today for report of service and report of settlement. This he told the court that the defendant made a proposal via a letter dated the 21-2-2023 where he made certain proposal which their client find unacceptable, hence apply to proceed with the hearing of this matter, this the defence counsel did not object but told this court they were not ready for hearing today, and the matter adjourned to the 16-3-2023 for hearing.

On the 16-3-2023 this matter commenced to hearing by taking the claimant witness.

This court in summarising the evidence of PW1 thus:

PW1 one ChukwumaDafe, a Christian and legal practitioner of suite 202, His Glory Plaza behind UBA/Access Bank Wuse 11 Abuja, lived at House No: 59, 22 Road, Kado Estate, Abuja.

In his statement he informed this court that he made a statement on oath before the court on the 16-12-2023 and also on the 15-3-2023 deposed to another statement on oath before the court. The two statements which he identified by his signature and prayed the court to adopt the two stamen on oath as its oral testimony in this case.

That in paragraph 5 of its statement on oath of 16th December, 2022 he made referred to a tenancy agreement, the said tenancy agreement which he recognised by his name and the name of the firm. Also in paragraph 7 of his

statement on oath deposed on the 16-12-2023 referred to quit notice, which he identified same as being signed by the landlord. Paragraph 10 of the witness statement deposed to on the 16-12-2022 referred to notice of owner's intention to recover possession together with proof of service, he recognised same through the signature of the court and that, the tenancy agreement is a photocopy, as he could not lay his hands on the original copy of the tenancy agreement.

The defence counsel who objected, to the tendering of all the documents but said he will address the court in its final written address.

This court then admitted them in evidence as follows:

i. **The tenancy agreement between Blue Bay Procurement Ltd and Safiya Farouk Said as exhibit A**
ii. **Notice to quit dated the 29-10-2021 as exhibit B.**
iii. **Notice of owner's intention to recover possession dated the 10- 11-2021 as exhibit C.**

Finally,he told the court to look at the document before the court, the processes and for the court to give considered judgment so that they can recover the premises.

Under cross-examination by the defence, counsel to the defendant, question and answered as follows:

Q confirmed that the witness statement on oath are contain the information which are within your knowledge.

A correct.

Q also confirm to the court that you and the claimant have taken a step to see that this matter is settled?

A we have had series of meetings with the defendant up to 6 times which we tried to reach an amicable settlement but it was not successful, so coming to court was the last resort.

Q confirm that the defendant also made some proposal and terms which you did not agree?

A she made series of proposals which she did not abide by.

Q confirm that in October 2022 you wrote a letter to the defendant conveying the ground of 6 months' extension on the property?

A Yes we wrote

Q if you see the letter can you identify it?

A yes I will.

On this letter the claimant counsel sought to tender same but it was objected to by the defence counsel, after taking objection from the counsel, this court ruled in favour of the claimant counsel and the letter was admitted in evidence by exhibit D.

Q reference to exhibit D, who signedthe letter?

A I signed the letter.

Q confirmthat it is your signature you re known with?

A I have several signatures, and these other ones are my signature.

Q confirm that the witness statement on oath was signed by you in the office and forwarded same to Your lawyer for filing.

A I signed it at the Registry of the court.

Q reference to the statement on oath exhibit D and the signature on the two contain on oath, are they the same?

A thesignatures are the same.

Q reference to exhibit B, is that signature not the same signature you have on the witness statement made on oath dated 15-3-2023?

A it is the same signature and that of the letter.

Q confirm that it is your signature on the notice to quit.

A it is my signature and signed for the landlord.

Q confirm that you are not the land lord on the property?

A I am not the land lord

Q confirm that the claimant in this suit is the blue bay and you are not a director in that company?

A I am not a director and I am not claiming to be.

Q Confirm to the court that there is no evidence before the court showing an authority from either the MD Board of directors as a principal officer of the claimant mandating you to act or sign documents on their behalf?

A there is an authority but not before the court.

Q confirm that the tenancy agreement exhibit B was prepared by you?

A yes I prepare it.

Q confirm that the defendant did not sign the agreement as a tenant.

A she signed as a tenant

Q show the court the position she signed for tenant?

A that she signed as a tenant, but on the wrong portion.

Q confirm that the tenancy agreement provides for mode of service of notice between the claimant and the defendant (clause E)

A read either personally or registered post.

Q do you have any evidence before the court that any notice to quit was served on the defendant through personal delivery or registered post?

A that she was served through the court because she has been evading service.

Q that means you did not comply with the tenancy agreement

A yes because the defendant had refused collecting the notice sent.

Q any evidence before the court that a courier man ever collected any notice from him or the claimant's company for service.

A we have evidence but not before this court.

Q reference to exhibit B, your name is not there but your signature is there signing in blockage?

A I signed for the landlord

Q confirm that there is no indication that the signature you signed was for the company or any director of the company?

A as an agent to the landlord, and solicitor to the company, I signed on behalf of the landlord.

Q endorsement and return shows that it is signed for somebody who signs the document?

A I don't know

Q reference to exhibit C, tell the court the mode of service of the document?

A I am not aware of the mode of service.

Q you wouldn't know if they complied with clause B.

A it did not emanate from me hence I wouldn't know.

Q confirm to the court that there is no paragraph or the person showing the person, of those person by the bailiff

A it was done by the bailiff of the court.

Q confirm to the court that you don't have a court order to paste the document.

A I wouldn't know.

Q reference to exhibit A, is there anything to show the intention of the parties or the whole agreement was to sell the property?

A the intention of the parties from the document was to sell the property but not in the document exhibit A.

No re-examination.

The claimant closed it's case, and the matter was adjourned to 4-4-2023 for defence.

On the 4-4-2023 both counsel were in court, and the defendant counsel informed the court that the witness called that she is bereaved and hence will be travelling to Kano. Based on the above this matter was adjourned to 3-5-2023 for defence.

On the 3-5-2023 both counsel as usual were in court. The defence counsel informed the court that they were faced with the same issue on the last adjournment date, and that they will be asking to file their final written address, meaning that they are resting their case on that of the claimant. This matter was again adjourned to 30-9-2023 for adoption of final written address on the 30-05-2023 both counsel were in court, and both counsel adopted their final written address. The claimant counsel who prayed this court to grant the relief prayed by the claimant.

The claimantcounsel filed the final written address dated the 4th May, 2023 filed on the same date of 9 pages and raised a sole issue for determination to wit:

> **"whether the claimant has established a tenancy relationship with the defendant and is therefore entitled to the reliefs sought?**

The defendant's final written address was dated the 24th day of May, 2023 filed on the 25-5-2023 wherein he formulated sole issue for determination to wit:

> **"whether the claimant has proved it's case and discharged the burden placed upon it to be entitled to the reliefs sought in the suit?**

The claimant on being served with the defendant's final written address, filed the claimant's reply on points of law to the defendant's final written address, dated the 29th day of May, 2023 of 9 pages.

After considering the statement of claim and the statement of defence, oral submission of the claimant witness as well as the written address I have to proceeded to adopt the issues so formulated by both the claimant and defendant counsel as mine for the determination of this court.

Issue No: 3

> **"whether the claimant has established a tenancy relationship with the defendant and is therefore entitled to the reliefs sought?**

Issues No:

> **"whether the claimant has proved it's case and discharged the burden placed upon it to be entitled to the reliefs sought in the suit.**

On issue one:

On this it is the submission of the claimant's counsel that the claimant has established a tenancy relationship with the defendant and he is therefore entitled to the reliefs sought in this suit, on this, he submitted that, it is the duty of the claimant to establish a tenancy relationship with the defendant and whether the relationship has been terminated and that the defendant is still holding over the property of the claimant. He Submitted that, it is trite that, in civil matters, the burden of proof lies on the party who will lose if no evidence is led to establish the claims of the claimant. Referred to section 136 of the evidence Act, 2011 which provides thus:

> **"(1) the burden of proof as to any particular fact lies on that person who wishes the court to believe in it's existence unless it 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.**

Referred to the case of Achor V Adejoh (2010) 6 NWLR (part 1191) pg. 537 at 577 paragraph F-G where Aboki JCA (as he then was) stated the law thus:

> **"it is trite that burden of proof in civil actions rests on the plaintiff because he who asserts must prove what he claims.**

That where a claimant leads credible evidence to establish his claims against a defendant, the onus then shifts to the defendant who asserts the contrary.

Referred to the case of E.D. Ysokwe&sons Co Ltd V UBN Ltd (1996) 10 NWLR (part 478) 281AT 299 paragraph C where Wali JSC stated the law thus:

> **"as urged by the learned senior adduced the onus is on him who asserts. It is only when a claimant has produced credible evidence that he has prima facie established his claim, the onus would then shift on the person asserting the opposite to adduceevidence he has rebutted.**

And on the necessary ingredients of the proof of facts relied on in an section 121 of the evidence Act 2011 which provides thus:

> **"a fact is said to be "proved" where after considering the matter before it the court either believes it to exist or considers it's existence so probable that a prudent man ought in the circumstance of the particular case, to act upon the supposition that it does exist.**

That to establish a tenancy relationship with the defendant, the claimant tendered exhibit A. which is the tenancy agreement with the defendant, and that during cross-examination the defence counsel made a heavy weather of the signature of the defendant in the said agreement.

PW1stated clearly that the signature of the defendant is on the agreement though in a wrong position. That exhibit A is therefore clear evidence of the creation of a tenancy relationship between the claimant and the defendant.

Referred the court to the case of Dickson & Anor V Assamudo (2013) LPELR-20416 (CA) PG. 30 Paragraph E where the court of Appeal Per Garba JCA stated the law thus:

> **"A tenancy relationship is created by an agreement entered into by the landlord, owner of the land or building thereon and the tenant, who desires the use and enjoyment of possession of the said land or building on the terms and conditions freely agreed to (which may be regulated by statute in some cases by the two of them"**

Holds that the claimant established a tenancy relationship with the defendant.

In response, the defendant's page 5 of it's written address reply that, a careful reading of paragraph 3:2 to 3:6 of the claimant's final written address shows pre-emption on the part of the claimant. That the claimant in an attempt to establish a tenancy relationship sought to tender a photocopy of a tenancy agreement which PW1 said during examination in chief that "he could not lay his hands on the original copy" without more that the defendant objected to the admissibility of the said document as exhibit with leave of the court to address the court on the reason in it's final written address, this he humbly withdraws their objection to the admissibility of the said Tenancy agreement and submitted

that it is not in issue that there was in existence a tenancy agreement between the claimant and the defendant, in view of the foregoing I shall resolve issue one in favour of the claimant.I so hold.

On issue two, which is the crux of this suit.

> **"whether the claimant has proved it's case and discharged the burden placed upon it to be entitled to the reliefs sought in the suit"**

On this it is the submission of the defendant counsel where he stated that, the gamut of the claimant argument as contained in paragraph 3:8 to 3:12 is that the tenancy agreement between the claimant and the defendant had been terminated by the quit notice.

He posed the following question:

> **"were valid statutory notices issued and served on the defendant before the commencement of this suit as required by law. The answer is NO:**

He Further submitted on the issue of who has the right to issue a valid notice to quit? On this he submitted that a notice to quit is a process and not a letter, he referred the court to the case of Sir John Richard Anyaehier& ors V Mr TalfordOngolo& ORS (2022) LPLR-58620) (CA) P. 38 paragraph G Per Abdullahi JCA. Also that a notice to quit has it's basis from a section of the recovery of premises Act applicable to FCT, and gives specificity on who is to issue/sign a notice to quit, and that failure to effect compliance renders such notice invalid. That for this provisions, only the landlord or his agent have the authority to issue a valid notice to quit.

He Submitted that, the claimant who is the landlord, in this suit is a limited liability company who has directors and principalofficers of which PW1 admitted and stated under cross-examination that he is neither a director in the company nor a principal officer of the company and that a perusal of the tenancy agreement (exhibit A) shows the signature of the directors of the company who represent the company in the transaction.

The PW1 under cross-examination informed the court that he personally signed the notice to quit. The notice to quit carries the name of the company and the indication that it's the landlord, but the signature is that of PWI who admitted that he is not a director of the company and not a member/officer/staff of the company. That the signature was not even signed for or on behalf of the company. This he submitted that it renders the issuance of the notice invalid as it can neither be said to have been issued by either the landlord or it's agent.

He Submitted further that the issue in this case is different from what gave rise to the decision of the supreme court per Ogunwumiju, JSC in pillars Nig. Ltd V William KojoDesbordes& ors (2021) LPELR- 55 200 (SC) which the claimant placed reliance on paragraph 3:11 of it's final written address, this case is on the irregularity of service of notice to quit (D), and that the issue in this case is both that of irregularity of service of notice and validity of the notice to quit. The posers these raises are:

i. **before a notice could be personally served should it not be valid?**
ii. **Can an invalid notice be said to be properly served?**
iii. **Is irregularity in giving notice to quit the same as issuing an invalid notice to quit?**

On this he submitted that the decision in Desbordes case can cure the issue of irregularity of service but cannot cure that of validity of the notice to quit. That in the absence of a valid notice to quit which is a condition precedent to the exercise of a court's jurisdiction renders the proceeding a nullity, no matter how well conducted. Refersto the caseof Ekpere V Ofurji (1972) 3 SC 113. Submitted that the agreement of parties on how notices are to be served supersedes the law and must be strictly complied with.

On this it is the submission of the claimant counsel inhis reply on points of law, where he referred the court to paragraph s 3:11 to £:16, the defendant raised the issue of validity of the quit notice (exhibit B) and precededto argue about the absence of a letter of instruction to the agent (PW1) to issue the quit notice which was served on the defendant at paragraph a3:17 to 3:20 where he submitted that, these arguments revolve around exhibit B, the quit notice served on the defendant. On This he submitted that exhibit B is not necessary or has no role to play whatsoever in the determination of this suit. This is because parties have agreed that the issuance of quit notice be disposed with, Referred to paragraph 8 of the tenancy agreement

Exhibit A. He therefore submitted whether the quit notice is valid or invalid or whether PW1, the agent was given the authority to issue Exhibit B is of no consequence. that the argument falls flat on it's face.

Let pipe through paragraph 8 of the tenancy agreement exhibit A

Exhibit A clause 8 provides thus

> **"at the expiration of the term hereby created, but without any quit notice, to yield up to the landlord, the premises in a tenantable condition by carrying out at the end of tenancy interior redecoration of the premises and replacement of all messing fixtures and outfitting.**

By this provision of clause 8 of exhibit A holds that the argument canvassed therein by the defendant cannot hold, hence should be knocked off. So I hold

On the letter of instruction for recovery of premises before issuance of the purported notice to quit.

On this it is the submission of the learned defendant counsel that it is a condition precedent for recovery of premises that a letter of instruction be issued before a solicitor/agent can issue a notice toquit. He Referred to the case of cooker V Adetayo& 7 ors (1992) LPELR- 15369 (CA) pg. 25 paragraph A-C-Per Ubaezone JCA holding thus:

> **"the final point that remains to be considered in this appeal is as to when exhibit C the letter of instruction to the solicitorwas issued or signed by the plaintiff/respondents. The law is that any such letter of instruction to the solicitor must be issued before the notice to quit is issued by the solicitor other than the solicitor has no authority to issue any notice to quit or notice of intention to apply to recover possession issued by any such solicitor before the letter of instruction is null and void and of effect"**

On this instant case he submitted that the claimant's witness under cross examination was asked whether he has any document before the court to show he was so appointed by the landlord to act as an agent on the property for the purpose of the recovering he answered in the negative.

That by section 2 of the recovery of premises Act makes it mandatory for an agent to be appointed in writing thus.

In this act, unless the context otherwise requires:

> **"agent means anyperson usually employed by the landlord in the letting of the premises or in the collection of the rents therefore or specially authorised to act in a particular manner by writing under the hand of the landlord.**

On this he submitted that, the inability of the claimant witness to provide his authority to act, even upon cross-examination, shows that there was no authority from the claimant referred to in the case of Olagun Ent. Ltd Vs SJ & m (1992) 4 NWLR (PT 235) PG. 361 & 374 paragraph G-H per Salami JCA.

On this I wish to state thus:

A brewing controversy insome of our jurisdiction today is the need for a landlord to authorise an agent in writing, before such agent can validly issue statutory notices to recover premises. The controversy is not really whether an

agent should be authorised in writing, but whether a solicitor, acting on the instruction of a landlord, is also bound by the requirement of writing? On this I have this to say:

> **"a solicitor is being a trained professional to solicit and advocate on behalf of his client, has apparent authority to do that which is best in the interest of his client. For this purpose, the solicitor cannot be regarded as an agent of the landlord that requires special writing and authorization before taking steps to recover premises"**

In Ayiwoh V Akorede (1951) 20 NLR at 5. Here the notice to quit and notice of owner's intention to apply to recover possession were issued and served by a solicitor, who was orally instructed by the landlord'sattorney. Robinson J. held that the notice was invalid as the solicitor did not come within the definition of "AGENT, not having been authorised in writing to issues and serve them,

It is pertinent to observe that the notices here were required to be issued under section 7 of the recovery of premises ordinance under section 2 of the same ordinance"

In Olusi V Solana (1956) LLR 18 Hubbard J held that a notice to quit may be given by the landlord's solicitor without the need for written instruction from the landlord"

There was a clear pronouncement on the issue in Nianda V Alake (1972) NWLR 23.

Where Hassan, Ag SPJ, held that there was no specific requirement of the landlord's written authority before a solicitor can issue a notice to quit unlike the specific requirement contained in the same section (section of recovery of premises law) for a notice of intention to apply to court for possession. A similar pronouncement has also been made in the earlier case of Lababedi V James (1962) of ALL NLR. (PT. 2) 30 where Udoma(as he then was) stating unequivocally stated the section of the recovery of premises ordinance makes no specific provision as to who should sign a notice to quit, and so, a notice to quit may be signed by a solicitor acting for the landlord without being authorised to do in writing.

From the three cases, it is clear that where a solicitor is orally instructed by the landlord and the solicitor issues the two notice i.e. notice to quit and notice of owner's intention to apply to recover possession, the former will be valid while the latter will be invalid for want of written authority. This position held sway until 1992 when the court of appeal in the case of Coker V Adetayo (supra). In that case, joint owners of premises agreed that one of the owners should occupy the ground apartment of the premises for his own use consequently upon this, a

solicitor was instructed in writing by all the owners, to issue the relevant notices to the Appellant, who was the tenant in occupation. Before the court of Appeal, the Appellant contended that the letter of authority by the landlords was given after the notices were issued and served by the solicitor, and so was invalid. The ground of this contention was that the 4th plaintiff signed the letter of authority in Bulgaria and return same between when it was issued in Nigeria on 3rd November, 1982, and 22nnd November, 1982, when the notice to quit was issued by the solicitor Ubaezon JCA, who delivered the lead judgement, to which Kolawole and Kalgo (JJCA) concurred, he held that there was no evidence in court to show that the letter of authority was signed after the notice to quit was issued. The notice to quit was therefore held valid. But before holding the notice to be valid, His Lordship had proceeded to state what he believed the law to be thus:

> **"the law is that any such of instruction to the solicitor must be issued before the notice to quit is issued by the solicitor otherwise the solicitor has no authority to act. Any notice to quit or notice of intention to apply to recover possession issued by any such solicitor before the letter of instruction is null and void and of no effect.**

In effect from all the authority cited I will boldly say that when a landlord briefs a solicitor to recover premises for him, the landlord secures the services of an independent contractor, who will use his professional skill to do that which is in the best interest of his client. In one word, a solicitor has apparent authority to conduct the case of his client. See Adewunmi V Plastee (Nig) Ltd.

The case also includes that to conduct incidental matters or matters precedent to the action, like the issue of notices for recovery of Premises the landlord does not therefore have to authorize him in writing to do what he should do as a solicitor. As it was held in Tukur V Government of Gongola State (1988) 1 NWLR (pt. 68) 39. The courts do not inquire into counsel authority to appear. Mutatis Mutandis, the court should not inquire into counsel's authority to issue notices to recover premises it is for the landlord to disown the solicitor if need be. Anything short of this would place solicitors at odds of even having to prove that illiterate landlords actually signed purported written authorities. This will lead to absurdity.

In view of the forgoing I have to disagree with the line of submission of the learned defendant counsel. So I hold.

On the issue of exhibit B and C where the claimant tendered with exhibit C a certificate of service which purports to be that of the court official who served the notice by pasting, on this it is the submission of the learned counsel to the defendant, that the certificate having been made and deposited in court

becomesa public document which requires certification in court in order to be admissible as evidence Act, 2011 provides for the certification of public document.

On this I wish to state that, a certificate of service is a document confirming that an individual or company was served legal documents. It is an important document because it needs to be filed with the court in order to prove that the person or company was served and was given the opportunity to respond.

It is the argument of the learned counsel to the defendant that on exhibit B there was no proof of certification as provided in section 111 of the evidence Act 2011. Therefore,urged the court to reject the document, on this the learned counsel to the claimant, submitted that, exhibit C attached and admitted in evidence is the original copy of the document produced by the bailiff who served the process on the defendant and not photocopy. That the originalcopy of the public document does not require certification. That the law is settled that only photocopy of public document requirescertification.

I have closely perused the documentsexhibits B & C before this court I have seen that, the document in question has on the endorsement of proof of service on the second pages. hold therefore that the assertion by the learned defendant counsel cannot hold water as that said being an original copy does not in law need certification before it's admitted in evidence.

It is in the submission of the learned claimant counsel on points of law where he submitted that, the service of the quit notice having been dispensed with by the parties, the defendant cannot complain about the manner in which she was served.

The learned defence counsel referred to the case of Saleh & Ors V Mattawale& ORS (2022) lpelr-58714 (CA) PG. 84-85 PARAGRAPH g-b, per Hussaini JCA held thus:

> **"by client of exhibits DEA of court, they are public documents within the meaning of section 102 (a) (ii) of the evidence Act and the same is admissible as secondary evidence under section 89 (f) and 90 (1) (c) of the evidence Act.**

On this the claimant counsel on point of law, said that the proof of service which was attached to on the other hand, is the original copy of the document produced by the bailiff who served the process on the defendant and not a photocopy of public document. Hereferred the court to the case of Ebu V Osun (2004) 14 NWLR-(PT. 892) 76 at 88 where Opene JSC (as he then was) queries the rational of certifying an original copy of public document saying.

> **"When a document is certified, it is certified to be a true copy of the original. If then the original is to be certified what will be certified to be a true copy of itself?**

Also in the case of Kassim V the state (2018) 4NWLR PT. (1608) 20, THE SUPPREME COURT Per EjambiEko JSC held that in view of sections 83, 85 of the evidence Act, it is not illegal for contents of a public document to be proved by the production of the original copy of the inspection of the court.

It is thus not the correct position of law that an original copy of a public document is not admissible in evidence or requires certification to be admissible" Accountability urges the court to discountenance the submission of the defendant,

In view of the argument canvassed by the learned defence counsel and that of the leaned claimant counsel, hold that, the argument as canvassed by the learned claimant is more credible than that of the argument and submissions of the learned defence counsel which does not hold water, hence it is knocked off.

Another issue is on the exhibit A which is the tenancyagreement that provides for the mode of service of notice clause (c) pages 4 and it's provide thus:

> **"any notice underthis tenancy agreement shall be in writing and shall be served either through personal delivery or by register post to the last known address of the tenant and in the case of the land lord, to them personal and or their authorized agent"**

On this the learned defence counsel submitted that, PW1 admitted under cross examination that it was not served in compliance with the tenancy agreement. This thenposes this question:

> "is such service a valid service of court process?

On this he referred the court to the case of Ndubuisi V Shobande (2013) LPELR -22770 (CA) PG. 15-16 PARAGRAPH E-C Per Oseji JCA thus:

> **What it left to be resolved noted is whether the service of the appellant could be deemed proper within the ambit of the law. The law is that where personal service is required, for any process, it must be so done. Failing which it will be rendered invalid especially at it effects notice to quit. This is however a peculiar situation: it would be a different ball game if he had insisted that he must be served personally or the respondent had forcefully dumped it on the said secretary or worse still if the secretary had signed for and collected it without the instruction of the appellant"**

On this he submitted that, service of notice to quit requires personal service or as agreed by the parties. that where the person receives same for the tenant, the receiver must have been so authorized and the defendant has stated in her defence at paragraph 10 of her statement of defence that she was not served with the notice as she only saw them annexed to the writ of summons served on her. This he submitted that there is no authority to receive the notices by any person and in line with the fact that the said notices were not served as required, he referred the court to the case of Nigerian Deposit Insurance Corp. V VisanaNig Ltd & ors (2021) LPELR-54934 (CA) pg 8 paragraph C-D Per Ikyega JCA thus:

> **"The supreme court held in the case of Arueze V Nwaokoni (2019) 5 NWLR (PT. 1666) 469, that the proper procedure for signing on behalf of somebody else is to disclose the name and identity of the person who you're signed and for whom it was signed if signed on behalf of another person in chambers and that the two names must be disclosed"**

He Further submitted that, the claimant's witness under cross-examination denied knowing anything about the service of the notices, even the purported pasting. This to my knowledge is not the true position of things as the witness before this court was the person that served the said notices which were effected, and such cannot be cross-examined on how the said notices were served and also cannot be cross-examined upon, on this it is the submission on point of law of the learned claimant counsel where he stated that the issue of the manner of service of quit notices takes the bottom of the argument of the defendant, and that the service of the writ of summons on the defendant constitutes a notice to quit. On This he referred this court to the case of pillars Nig. Ltd V Williams KojoDesbordes& Anor (2021) LPELR 55200 (SC) Per Ogunwumiju SC.

He Further submitted that all the arguments of the defendant in this regard go to no issue as the arguments are nothing more than a clear picture of a drowning fellow who is prepared to grasp anything in sight for survival.

I have carefully perused the notices before the court, and on the quit notice service waseffected through one HajiyaSafiiya Said of 8, Deng 4190peng Asokoro a housewife/business woman dated on the 29-10-2021, while the notice of owner's intention to apply to recover possession was pasted on the entrance door, reason by the process server was that the defendant was not around and the house was locked and he pasted the notice on the entry gate at Pot 4069, Cadastral Zone A 04, Asokoro FCT Abuja.

On this I wish to add that service of processes is essential to ensure that a party is put on notice of the pending litigation and what stage it is. Service on a

defendant or any party is for him to know the claim against him so that he may be aware of it and be able to resist, if he sodesires, that which is claimed against him. See Guda V Kitta (1999) 2 NWLR (PT. 629) 21. in view of the above I hold that the defendant cannot claim ignorance of the service of the notice hence I shall resolve the issue of notice in favour of the claimant.

On the issue of discrepancies, on the signature of PW1 on the witness statement on oath dated 16th December, 2022 and witness statement on oath dated 15th March, 2023.

On this the Defendant counsel in paragraph 3:36 of it's written address stated thus:

> **"PW1 at trial adopted two (2) 6th December, 2022 and 15/3/2023 respectfully. Statements on Oath adopted as evidence carried different signatures purported to be that of PW1.**

On this he referred this court to section 10 (1) of the evidence Act 2011 which provides thus:

> **(1) In order to ascertain whether a signature writing, seal or fringe impression is that of the person by whom it purports to have been written or made any signature writing, seal or finger impression to the satisfaction of the court has been written or made by that person may compared with the one which is to be proved although that signature written, seal or finger impression has not been produce or proved for any other purpose"**

The learned defence counsel placed reliance on the following cases:

Polaris Bank V Vital Vets (Nig) Ltd (2020) LPLR-49954 (CA) 31-32 paragraph A-C- where Ekanem JCA held thus:

> **"A court of law that is faced with a disputed signature has several options to resolve the dispute one of the options is that it has the power to compare the disputed signature with any other signature agreed to be an undisputed or genuine signature of the person pursuant to section 101(1) of the evidence Act.**

Babangeri V Romac Int'l. Cop Ltd (2022) LPELR-57335 (CA) pg. 14 paragraph A-C

Per Mosale JCA,

NikiTobi considering section 108(1) & (2) (now section 101(1) & (2) of the evidence Act, 2011 above is that to turn over to the court the duty of comparing handwriting or signature in a civil case, the parties to the dispute themselves ought first to have called evidence to show that a person signed the signature in dispute. The court cannot without such evidence volunteer to find dispute. The court cannot without evidence for one of the parties as to who had signed the disputed signature"

And the case of Yunusa Waziri & Anor V the State (1997) 3 NWLR (PT. 496) 689 & 720 -721 paragraphs H-C Per Edozie JCA, it was held that the appropriate time for comparing a disputed signature is where there are 2 documents which have been admitted by the person who owns the signature on the document to be used for the comparism. He submitted that, the defendant is also to comply with the provision of section 101 of the Evidence Act 2011 tendered in evidence a letter which was admitted as exhibit D. that PW1 under cross-examination admitted that he signed and issued exhibit D and that a close look at the signature on exhibit B, (Notice to quit) exhibit D and the witness statement on oath dated the 16th December, 2022 reveals that PW1 signed those documents.

In view of the exhibit B and Exhibit D and the witness statement on oath dated 16/12/22 is entirely different from the signature contained on the witness statement on oath.

Dated 15/3/2023 and he therefore submitted that the signature on the witness statement on oath dated the 15/3/2023 is not that of PW1 and was not signed by PW1, heurged the court to discountenance the witness statement on oath dated the 15th, March 2023.

In response, the claimant counsel in paragraph 11 of it's reply on point of law, stated that contrary to paragraph 12 of the statement of defence, the notice to quit was signed by the landlord in line with the law.

On this, under question and answer.

Q that to the two witness statements on oath, reference to exhibit D and the signature on the two statements on oath, are the two signatures the same?

A thesignatures Are the same

Q exhibit B is that signature not the same signature you have on the witness statement made on oath dated 15-03-2023?

A it is the same signature and that of the letter.

Q confirm that it is your signature on the quit notice.

A it is my signature, I signed for the landlord.

On this and as I have stated earlier in this judgment, that it is the agreement of parties, that notice was not necessary same having been dispensed with by the agreement of parties in exhibit A He submitted that where parties agreed that the services of quit notice is not required. Holds that the quit notice has no role to play whatsoever in this suit by the agreement of parties.

On this, I wish to state that, the essence of requiring the signature of the claimant or his legal practitioner is to prove the originality, source or authenticity of the application for issuance of the writ of summon, i.e. to prove that the originating process was indeed authorized by either the claimant or his legal practitioner. it is only the signature appended therein that can prove the maker of the document. See M.C.C (Nig) Ltd v COSEA (Nig) Ltd (2018) 11 NWLR (Pt. 1629) 47 CA. the implication of a person's signature on a document is conclusive evidence that he agreed with everything in the document. See Joseph V State (2011) 16 NWLR (pt. 1273) 226 SC.

In line with the provision of section 2(1) of the legal practitioner Act Cap 207 of the LFN 1990, court processes must be signed by a named legal practitioner. Therefore, signing by a legal practitioner known to law, is a condition precedent to the assumption of Jurisdiction by the court. A party who appended different signature on several documents is fatal, provided the person who signed it acknowledges it as his. it is the law that the important things to note always is whether the document has the mark or admitted signature of the maker and the said maker or signature represent his authority. See Dalhatu V Dicko (2005) ALLFWLR (pt. 242) 483 at 494, paragraph B-C. it is only where a signature is denied that the court is made to follow one of their procedure.

i. **Receive evidence on the point from someone who witnessed or attested the document.**
ii. **Hear evidence from a person families with the signature or who saw him write that signature.**
iii. **Compare the signature admitted to be his with the disputed document by virtue of a section 101 of the Evidence Act. See also Adence V Olude (2002) 18NWLR (pt. 299) 413 at 430**.

In the instant case, PW1 did not deny the signature on the quit notice and hence I shall resolve the issue of signature for the claimant. The submission made by the defence counsel is hereby overruled.

The next question to be attached having determined that the notices served on the defendant was correct and the signature in both the quit notices and the statement on oath of 15-3-2023 has been resolved in favour of the

claimant, the next is whether the tenancy between the parties has expired to enable the defendant yield up possession of the premises.

On the statement of claim, paragraph 3 the claimant stated that the defendant became a lawful document of the said property by reasons of a tenancy agreement executed on the 18th of February 2019, paying on annual rent of N30,000,000.00 the defendant paid his rent on the property for two (2) years upfront commencing from the 18th of February, 2019 and lapsing on the 17th of February, 2021. And on the expiration, 2021 the defendant failed to renew her rent. Consequent upon the failure of the defendant to renew her rent, she was served a quit notice dated the 28th of October, 2021 and following the expiration of the Defendant rent on the 17th February, 2021, the defendant began to falter in the payment of rents by staggering the payments of arrears in bits and pieces by six months, two months, thereby covering the period of 17th February, 2021 to 31st October, 2022. Sequel to the service of quit notice, the claimant served on the defendant a seven-day notice of owner's intention dated the 10th of November, 2022 and despite the service of the notices, the defendant has failed to deliver up vacant possession of the property to the claimant.

In response, the learned counsel to the claimant in it's paragraph 6 stated thus:

> **That I know that the service of the quit notice on the defendant in this case is a surplusage as the parties agreed by paragraph 8 of the tenancy agreement to dispense with the service of quit notice at the expiry of the term of the tenancy.**

Paragraph 11: that from the onset, the claimant informed the defendant that the house is not for rent but for sale.

Paragraph 12: that the defendant then informed the claimant that she intends to buy the property and it's because of the intention of the defendant to buy the property that the claimant allowed the defendant into the property as tenant

On the issue of either the quit notice or notice of owner's intention to recover possession from the tenant being irregular, this has been settled in the case of pillars Nigeria Ltd V William KojoDesbordes& Anor (2021) LPELR-55200(SC) at page 24-26, the Nigerian Judicial oracle took a very proactive and practical decision Per Ogunwumiju JSC as follows:

> **"The justice of this case is clear. The Appellant has held on to the property regarding when it had breached the lease agreement day one. It had continued to pursue spurious appeal through all hierarchy of court 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 of the court of summon dated 13/5/1993 for possession 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 any technical rule equity demand. That whoever and whenever pure is controversy on when or how notice of forfeiture or notice to quit is disputed by the parties, or even where is irregularity on notice to quit, the filing of an action by the Landlord to regain possession of the properties 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 from the periodic tenancy is whether, weekly, monthly quarterly, yearly e.t.c immediately a writ is file to regain possession, the irregularity of the notice should start to run from the date the writ is served. If your example, a year 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 issue, if any between the parties.

To the glory of God, we are now at new dawn with the above-quoted decision of the Apex court.

On the basis of this authority, which I must now tow, 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 Defendant, the writ initiating this suit cannot be invalidated as the service of the writ itself constitutes sufficient notice to the defendant that the claimant wants to recover possession of the property together with the mesne profit.

The defendant in this case has more than enough notice that the landlord is desirous of possession of his property and recovery of the mesne profit. Gone were the days, when cantankerous troublesome and unpleasant tenants hold on to technicalities of service of statutory notices to defend the claim of property owners by illegally holding unto such properties.

In this instant case, the tenancy agreement dated the 18th February, 2019 between Blue Bay Procurement Ltd and Safiya Farouk Said, clause 8 of the tenancy agreement has settled all issues concerning irregularity of notices to quit notice of owners intention to recover possession, clause 8 produce below.

> **"at the expiration or sooner determination of the term hereby created, but without any quit notice to yield up to the landlord, the premises in a tenantable condition by carrying out at the end of tenancy interior redecoration of the premises and replacement of all messing fixtures and fittings"**

Clause 12:

> **To vacate the demised premises at the expiration of the present tenancy and that if for any reason the tenant over stays or holds over the rental premises without the approval of the landlord, the tenants undertake to indemnify the landlord for all cost, expense, legal fees and mesne profit marred for the unlawful use and occupation of the rented premises.**

In this case it is not in doubt that the defendant's rent expired on 17th February, 2021. This the defendant did not deny as a close perusal at clause 5 of it's witness statement on oath is clear and on this the said which I will reproduce below for the sake of clarity.

Clouse 5: of the witness statement on oath of Safiya Farouk Said states thus:

> **"that I state as a fact that paragraph 5 of the statement of claim is not true and further state that, our (the claimant through it's managing Director, Dr Musa Babayo and myself original intention was rent to buy. That after the expiration of the tenancy on 17th February, 2021 I and Dr Musa Babayo on behalf of the claimant negotiated the purchase price of the property and agreed One Billion, three Hundred Million Naira (1,300,000.00) only but unfortunately the purchase failed.**

Also paragraph 7,

> he stated that, ---I have always paid the rent upfront, and I have never paid in arrears, that the period of 6 months and 2 months mentioned were the period for which negotiation were on going for the purchase of the property.

It is trite that where facts in the statement of claim are admitted by the defendant in the statement of defence, no issue is joined on facts as such no evidence is admissible in relation to those facts. once there is an admission, then there is no dispute and so the need for proof does not arise. Admission acts as short cuts in the judicial process as they save so much valuable litigation time. See Wema Bank Plc V I.IT Ltd (2011) 6 NWLR part. 479, also Anson Farms Ltd V N.A.L Marchant Bank Ltd (1994) 3 NWLR (pt. 331) 241.

It the equally trite that where there is an admission of indebtedness by a defendant, the court should enter judgement in favour of the claimant. See B.B.C.I VDawphin (Nig.); Ltd (2014) 16 NWLR (PT. 1432) pg. 90.

Reference to paragraph 7 of thedefendant's witness statement on oath, dated 14/3/2023. The law is settled that no evidence is admissible on facts admitted.

From the totality of the evidence led before the court and for all the reasons advanced, I hold that the claimant has proved his claim to entitle him to judgment.

On the claim of 20% interest on the judgment sum, this is one granted at the discretion of the court pursuant to the provision of order 39 rule 4 of the rules of court. Upon acalm consideration of the facts of this case, the relief is availing.

In summation and for avoidance of doubt, I must [proceed to enter judgment in favour of the claimant.

Judgment is hereby entered for the plaintiff against the defendant as follows:

1. **The defendant to deliver up vacant possession of the Maisonnette with separate guest wing and maids quarters known as Plot 4065, Cadastral Zone A04,Asokoro E, Abuja within 14 days from today.**

2. **The defendant is to pay the sum of N2,500,000.00 (Two Million Five Hundred Thousand Naira) Per month being mesne profit beginning from the 1st of November, 2022 till vacant possession is delivered.**

3. **I award 10% interest on the judgment sum above per annum from today until the final liquidation of the Judgment sum.**

……..

HON. JUSTICE A. Y. SHAFA

APPEARANCE:

1. T. R Agbayi for the claimant with A. B. Opadotun.
2. UbongUdosen for the defendant.