

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

THIS WEDNESDAY 21ST DAY OF SEPTEMBER, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/1663/2022

BETWEEN:

- 1. CATHERINE HEMBADOON AGBO**
- 2. EVELYN MNGUSUUN AGBO.....CLAIMANTS**

AND

- 1. NNAMDI EZEAGU**
- 2. MR ALEX OYINDO.....DEFENDANTS**

JUDGMENT

The claimant by the writ of summons dated 20th May, 2022 filed the same date. Claims against the defendants the following reliefs:

- 1. A declaration that the letting out to a third party the two units of Two Bedroom Apartments situate at OkeyNwachukwu Street, DawakiDistrict, FCT Abuja by the Defendants after the claimant had made the complete payment of the total amount of N3,200,000.00 (three Million, Two Hundred Thousand Naira) as annual rent for the said property is illegal, unlawful and a breach of contract.**
- 2. A declaration that the defendants refund of only the sum of N3,080,000.00 Three Million, Eighty Thousand Naira, and their refusal to refund the balance of N120,000.00 (One Hundred and Twenty Thousand) out of the total sum of N3,200,000.00 (Three**

Million, Two Hundred Thousand Naira being the total and actual sum paid by the claimant as annual rent for the Two Units of the Two Bedroom Apartments situate at OkeyNwachukwu Street Dawaki, District, FCT Abuja is dubious, Illegal, unlawful and thus a breach of contract.

- 3. A declaration that the claim by the defendant that part of the annual rent was non-refundable and the claim that payment of the sum of N120,000.00 (One Hundred and Twenty Thousand Naira) was made to the agent as agency fee amount to a unilateral variation of contract by the defendants and a breach of contract.**
- 4. An order of this Honourablecourt compelling the Defendants to immediately refund the balance of N120,000.00 (One Hundred and Twenty Thousand Naira) to the claimant by crediting the claimant Gtb Account Number 0025077895 with account Name Catherine Agbo in the said sum, being the balance of the Money Paid as annual rent for the two unit of the Two Bedroom Apartment situate of OkeyNwachukwu Street, Dawaki Street, FCT Abuja.**
- 5. An order of this Honourable court awarding the sum of N500,000.00 against the defendants infavourof the claimant as special damages suffered by the claimant as a result of the Defendants wilful breach of contract.**

Particulars of damages:

- a. Part payment of myrach bedding and interiors by 1st claimant for contains accessories and Transportation N300,000.00.**
- b. Part payment to myrach bedding and interiors by 2nd claimant for contains accessories, and Transportation N200,000.00.**
- 6. An order of this Honourable Court awarding N10,000,000.00 (Ten Million Naira) damages against the Defendants in favour of the claimants for breach of contract to wit: unlawful letting out to a third party the Two Bedroom Apartment situate at OkeyNwachukwu Street, Dawaki District FCT, Abuja and unlawful holding unto the balance of N120, 000.090 (One Hundred and Twenty Thousand Naira) from 22nd April, 2022**
- 7. An order awarding post judgment interest on the aggregate sum and judged due in reliefs 4, 5, & 6 above at the rate of 10% per annual until full satisfaction of the Judgment and**

8. Cost of N400,000.00 (Four Hundred Thousand Naira) only.

This matter was assigned to this court dated the 27-5-2020 acknowledge by this court on the 7-06-2022.

The defendant filed their memorandum of appearance dated the 12th day of August, 2022 together with the 1st and 2nd defendant joint statement of defence dated 23rd September, 2022 where in the joint statement of defence counter claims against the claimants as follows: jointly and severally against the claimant/Defendants to the counter claim to wit:

- a. A declaration that the action of the claimant/defendant to the counter claim is suing the Defendant for just cause amount to malicious prosecution.
- b. The sum of N5,000,000.00 as damages for malicious prosecution.
- c. C. N250,000.0-0 paid as legal fee.
- d. 10% interest for judgment sum.

On the 22nd day of November, 2022 the claimant filed reply to the defendants, Joint statement of defence and defence to counter claim of 9 pages and the 1st claimant additional witness statement on oath of 8 pages and the 2nd claimant additional witness statement on oath of 8 pages and annexed exhibit marked exhibit 1, 2, 3, 4, 5, 6, 7, 8, 9, 10A, 10B & 11.

Particulars of statement of claims are as follows:

The 1st claimant is a media practitioner carrying on the business of Journalism and a sister to the 2nd claimant. The claimant is an entrepreneur and a sister to the 1st claimant.

The 1st defendant is a property management consultant trading under the name and style of NnamdiEzeagu Consulting and who manages the property situate at OkeyNwachukwu Street, Dawaki District FCT, Abuja(the property) on behalf of the 2nd Defendant. The 2nd Defendant is the landlord and owner of the property managed by the 1st Defendant.

The claimant avers that sometimes on the 5th March, 2022, the 1st Claimant saw the property described for rent on www.NigeriaProperty.com and immediately contracted the phone number 08052754983 which was attached to the advertisement. A staff of the 1st defendant picked the call but informed the 1st claimant that the property was still under construction and that they had not started receiving payment from prospective tenants.

On the 14th March, 2022 the same staff of the 1st Defendant called the 1st defendant informing her that the management has started receiving payments from prospective tenants. On the said 14th March, 2022 the 1st claimant contacted the 2nd claimant, forwarded the number of the 1st defendant staff to her and Instructed her to go and inspect the property as they were both desirous of renting the two units of the bedroom apartment in order, to combine staying together as they have always done since childhood and even after the marriage of the 1st claimant.

On the 15th March, 2022 the 2nd claimant contacted the staff of the 1st defendant but the lady only gave her directives and the number of the security man at the property to enable her locate the property and inspect same, and the 2nd claimant who got direction, on how to locate the property through telephone conversation with the security man, got to the property, inspected it and immediately informed the 1st claimant that the property was what they actually wanted. Further to above, the 2nd claimant immediately contacted the staff of the claimants resolve to rent the property and the lady instructed that the claimant should call at their office for further deliberations.

On the same 15th March, 2022, the claimant called at the office of the 1st Defendant at No. 17 Libreville Street Wuse 2, Abuja FCT, as agreed where they were given a form to fill and sign titled “know your client” and a Guarantors form to fill and a document which clearly stated the procedure for leasing a property’s with the Defendant which the 1st Defendant received after the claimant had signed with a promise to return same after the 2nd defendant had signed but have refused to return the document. Despite repeated demands.

After filling the forms, the claimant were assured that the property will be fully completed at the end of the month of March, 2023 as fixing of Kitchen Cabinets, windows nets wardrobes and electricity meters were still underway.

The claimant while in the office of the 2nd defendant, emphases that they were only interested in the 2 units of the 2 Bedroom apartment on the first last floor of the one story building and insisted that they were interested in renting the 2nd Units on the first floor of the building.

The 1st defendant informed the claimant that only one unit of the two-bedroom apartment, out of the two units were still available as someone else had taken the other unit on the first floor. The 1st claimant then resolved to pick the one unit on the first floor while the 2nd claimant world take the other unit on the ground floor.

On the 17th March, 2023 the 1st Defendant staff called and informed the claimants that a background check were conducted by the defendants and the claimants were fit to be let into the property and she immediately sent the 1st defendant Keystone Bank Account Number 1007002194 belonging to NnamdiEzeagu Consulting and instructed the claimant to forward their payment for the annual rent into the said account. The claimant immediately made payment of the total sum of N3,200,000.00 (Three Million, Two Hundred Thousand naira) as annual rent for the two units of the 2-bedroom apartment at the annual rate of N1,600,000.00 (One Million, Six Hundred Thousand Naira per unit.

On the 28th March, 2022 the 1st Claimant contacted the office of the Defendant to ask if she could send an interior decorator to go and take measurement for curtains and other fittings in the property they had already paid for and the staff agreed and even forwarded a picture on WhatsApp showing the rooms, one upstairs, on the first floors, allocated to the 1st claimants and one on the ground floor allocated to the 2nd claimant. See annexure 3. At the end of March 2022, the time which the defendant had assured that the property would be ready for the claimants to move in, there were no information from the defendants, and the 1st claimant contacted the staff of the defendants on 4th April, 2022 to find out why they were yet to be handed the keys to move into the property as agreed, the defendant apologised for the delay with a promise to deliver the keys to the claimant on the 15th April, 2022.

On the 5th April, the 1st Defendant invited the 1st claimant to their office where the claimant were giving tenancy agreement to sign on the said tenancy which executed to their office where the claimants were given tenancy agreement to sign and the said tenancy agreement which were executed between the claimant and the 2nd defendant were retrieved from the claimant with a promise to return same after the 2nd defendant sign but it has not been returned till date, annexure 4.

The claimant on the 16th April, 2022 a day after that day the defendants had assured two weeks earlier that the property will be ready and the keys to the property would be handed over to the claimant, sent their interior decorator to continue with the process of taking measurement for curtains and other interior fittings but on getting to the property, the interior decorator confirmed from the occupants of the unit of the 2 bedroom apartment on the 1st floor which the 1st claimant paid for, that the same property was let to a new occupant who had, already spent two weeks on the property the 1st claimant quickly contacted the 1st defendant who confirmed that they actually let the property to another tenant.

The claimant quickly contacted the 1st defendant and promised or threatened to refund every amount paid by the claimant for the two unit of the 2-bedroom apartment.

The claimant through their lawyer caused a demand letter dated 22nd April, 2022 to serve on the Defendant for a refund of the total sum of 3,200,000.00 (Three Million Two Hundred Thousand Naira) for each unit. Copy of the letter annexure 5.

Upon the receipt of the demand notice, the defendants wrote the claimant vide a letter dated 25th April, 2022 insisting that the sum of N120,000.00 (One Hundred and Twenty Thousand Naira) would be deducted from the total sum of 3, 200,000.00 (Three Million, Two Hundred Thousand Naira).

On the 25th April, 2022 the Defendant made a refund of the sum of N1,540,000.00 (One Million Five Hundred and Forty Thousand Naira) only to the 2nd Claimant. The claimant through their counsel wrote to the Defendant forwarding their account detail and out-rightly rejecting the idea of deducting any money under any guise from the total amount of N3,200,000.00 (Three Million, Two Hundred Thousand Naira) which was paid as annual rent for the two unit of the two-bedroom apartment Annexure 7 & 8.

On the 5th May, 2022, the Defendant again refunded the sum of N1,540,000.00 (One Million Five Hundred and Forty Thousand Naira only to the 1st claimant hereby not refunding the balance of N120,000.00 (One Hundred and Twenty Thousand Naira) which the defendant has held unto and has refused to refund-annexure 9 (the failure of the defendant to complete the property within the time agreed by parties and the fact that the defendants let out the same property for which the claimant duly paid for caused the claimant a lot of embarrassment and untold hardship. The claimant also expended money by contracting an interior decorator who was also paid money to buy interior fittings and curtains based on the measurement taken at the property that the defendant decided to let out to a third party after the claimant had paid full annual rents.

Particulars of expenses incurred by the claimant.

- i. part payment to Myrach bedding and interior by the 1st claimant for curtains, accessories and transportation N300,000.00.**
- ii. Part payment to myrach bedding and interior by 2nd claimant for curtains, accessories, and Transportation N200,000.00.**

The claimant employed the service of a lawyer who wrote letters on their behalf and have also paid the sum of N400,000.00 (Four Hundred Thousand Naira) as

professional fees to starlight legal consult to institute this action. Annexure 11 receipt of payment.

in the cause of proceedings, the claimants testified as PW1 and PW2 while the defendant testified as DW1,

This court summarising the evidence of the claimant's testimony thus:

PW1, one Catherine Hambadoon Agbo a journalist stated that, she made two statements on oath, one on the 20th day of March, 2022 and an additional witness statement on oath on the 23rd November, 2022. The two witness statements on oath were identified through her name and her signature and she prays the court to adopt the two witness statements on oath as its oral evidence before the court.

The following documents were equally identified by PW1 and were all tendered and admitted in evidence

- i. Certificate of compliance exhibit A.
- ii. Copies of the 1st claimant statement of account Agbo Catherine Hambadoon 4 copies exhibit B-B3
- iii. Pictures evidence of the WhatsApp message exhibit C.
- iv. Letter dated the 22-4-2022 from Alastair Foster associated addressed to NnamdiEzeagu consulting as exhibit. D.
- v. Letter dated the 22-4-2022 from NnamdiEzeagu Estate surveyor & values addressed to the principal parties Alastair Forster and associate exhibit E.
- vi. Re demand for refund of total amount paid as rent for the property situate at OKeyNwachukwu Street Dawaki-District, Abuja FCT. from Starlight Legal consult to the principal partner NnamdiEzeagu consulting exhibit F.
- vii. Receipt/invoice from myrach bedding and interior with receipt No:000738, addressed to Catherine Agbo exhibit G.
- viii. Cash receipt from starlight consult No. 0006 dated the 5-5-2022 addressed to Catherine Hambadoon Agbo for filing and professional fees as exhibit H.
- ix. Pictures showing the staff of the 1st Defendant advertising the apartment paid for a higher price as exhibit I.

The tenancy agreement, the lease document were not signed hence were tendered marked rejected.

Under cross-examination.

Q you informed the court that you saw the property as Nwachukwu property. Com

A yes I saw the property advertised on that WhatsApp.

Q and you called the No. with 0802754983

A yes I called that number.

Q that where is the owner of the number in question?

A when I called the number the person that picked was a female voice and she introduces herself as NnamdiEzeagu consulting by the name Ejeoma Victory.

Q when you got to the office did you meet the said victory?

A yes he met her in the office on that faithful day and agree to meet in the office.

Q how is Ejeoma Victory and what is her complexion?

A Dark in complexion, average height in and a letter but teller.

Q are you aware that you never saw Ezeoma Victory and no body Identified himself as Ezeoma Victory.

A I met the said Ezeoma Victory in the 1st Defendant office at Wuse 2. She gave the address and agreed the time to meet in the office. She met her in the office as already agreed.

Q do you know a company called RockmetNig Ltd?

A I am not aware of any company like that.

Q and you are not aware that Ezeama Victory works with RockmetNig Ltd?

A as far as I know she works with NnamdiEzeagu Consulting

Q What is her position in NnamdiEzeagu?

A I don't know her position in that office, all I know I met her in that office and a staff of the office.

Q you claimed in your witness statement on oath that you want to stay in the same compound with your sister?

A yes.

Q is the flat which you rejected in a different compound or the same compound?

A it is in the same compound, but not the flat the interest was indicated in.

Q you informed the court that, on the 24/4/2022 you saw the property which is rejected being advertised by Ezeagu?

A the property I paid for, I saw it advertised at a higher rate.

No re-examination.

PW2

One Agbo EvelyMngosoun an entrepreneur. In her evidence she states that she deposed to two witness statement on oath, dated 20/5/2022 and 23/11/2022. The said statement she identified through her name and signature and adopted as her oral testimony before the court.

That in it's witness statement on oath, she referred to the following documents:

- i. Certificate of compliance
- ii. Statement of account of the 2nd claimant.
- iii. Invoices of the interior decoration.

the under listed documents were all admitted in evidence and marked as exhibit J, K, L, respectively. She averred that she had never engage anybody as an agent.

Under cross-examination by the defence counsel. the following are the question and answered.

Q you tendered some documents before this court.

A yes I did.

Q Did the interior decorator install the items in the premises?

A yet to be install.

Q did you leave the items in the premises?

A I don't know about that

Q you informed the court that your sister is marriage.

A yes I did

Q is the 1st claimant lived with her husband?

A her husband is in Lagos.

Q was there any time she lived with her husband.?

A the husband has always been in Lagos.

No. re-examination.

The claimant then closes the case and the matter adjourned for defence.

The summary of the defence witness DW1 thus.

DWI, one AbangPual an estate Surveyor and valuar with NnamdiEzeagu consulting (the 1st defendant).

That the claimant came to their office to rent an apartment. That he made a witness statement on oath on the 23/5/2022. The said which he identified by his name, passport and his signature. The said was adopted as it's oral testimony before the court.

That in paragraph 12 of his written witness statement on oath, he informed the court that, the sum of N120, 000.00 was paid as agency fee to RockmetNig Ltd, through one Ifeoma Lillian Ezeriko on behalf of the defendant and the transaction receipt was issued.

That at paragraph 4 of the counter claim and paragraph 23 of the witness statement on oath he informed the court that payment of N250,000.00 was made. The said receipt issued by Ifeanyi M. Nnadiko&Co for the sum of N250,000.00 being legal fee in suit No. CV/11663/2022 admitted in evidence as exhibit DWW1. She went further to state that she came to tender the two documents because his colleagueIfeoma has some domestic issues that made her to travel. The document was tendered and admitted in evidence as exhibit DWW2 and DWW3 i.e. the certificate of compliance and the transaction receipts.

Under cross-examination by the claimant counsel, the following question and answer were asked.

Q you informed the court that you are a staff of the 1st Defendant?

A yes I am

Q that on exhibit B1 she should confirm to the court that the 1st claimant paid the sum of N1,600,000.00 to the Defendant.

A it is correct

Q reference to exhibit A2-and B3 confirm to the court that on the 5-5-2022 the 1st Defendant only returned the sum of N1,540,000.00 into the 1st claimant account?

A yes that is correct.

Q reference to exhibit L, he should confirm to the court that on the 17-3-2022 the 2nd claimant through her business account paid the sum of N1,600,000.00 to the 1st Defendant Account?

A that is correct.

Q reference to transaction on the 26-4-2022 exhibit L confirm to the court that the defendant only returned the sum of N1,540,000.00 to the 2nd claimant business account?

A that is correct.

Q have you ever, seen one Catherine and Evelyn the 1st and 2nd claimant

A yes

Q can you describe the 1st claimant?

A I wouldn't know who is answering who but a bit flashing while the other is dark in complexion and both of them are almost the same height.

Q i will be correct to say you did not take any part between claimant and the defendant?

A I took part in the tenancy process.

Q did you know Ifeoma Lillian Ezoreoke?

A yes

Q How do you know her?

A she is my colleague.

Q Did you also know one victory ozeama.

A yes I know her

Q can you confirm to the court that he is also your colleague to the 1st Defendant?

A she is not.

Q paragraph 13 of the Defendant statement of defence, shows that Victory O. is an agent and not a not a colleague of the organisation?

A she is not.

Q paragraph 13 of the Defendant statement of defence, shows that, Victory O. is an agent and not a colleague of the organisation.

A she is an agent that work with NnamdiEzeagu.

Q you introduce yourself to be estate and Surveyor?

A yes

Q with your experting are you aware that agency relationship is contractual?

A yes it is contractual

Q confirm to the court that there is nothing before you that the court could suggest that the claimant entered into contractual obligation with anybody at all?

A yes for the fact that the agent Ezeoma Victory through the claimant to us to NnamdiEzeagu consultant she is entitled to her pay.

Q but there is no document to show that he went into the relationship?

A there is no such document.

Q can you confirm to the court whether there is anything from the claimant authorising you to pay one Kobo of his money to anybody as agency?

A once the transaction is completed, and the key handed over to the tenant the agent is considered to have completed her own part of the deal, and therefore are entitled to their fees.

Q so there is no document from the claimant authorising you to pay the money to anybody?

A we don't need any authorisation.

Q you said you have handed over the key to the claimant?

A yes

Q the claimant did not move into the said apartment?

A yes she did not.

Q when you advertise you put your phone number to any prospective person to call?

A yes sir.

Q you are a staff of the 1st Defendant and being paid salary by the 1st defendant?

A that is correct.

Q this apartment we are talking about; you have rental it out to someone else.

A yes.

Q and the person has paid you including all your money and charges?

A yes.

No re-examination.

The defendant closes it's case and the matter adjourned for address.

On the 7- June, 2023 parties adopted their final written address.

The defendant in it's final written address formulated three issues for determination to wit:

- 1. Whether having regard to the agency relationship between Rockmet Nigeria Ltd, represented by one Victory Ozioma and the 1st Defendant and the payment of N120,000.00 made by the payment of N120,000.00 made by the 1st Defendant to the said Rockmet Nigeria Ltd for introducing the claimant, to the 1st Defendant, the claimant are entitled to a refund of the said N120,000.00 deducted from their refunded rent as agency fee after the claimant unilateral withdraw/ surrendered from the tenancy?**
- 2. Whether having regard to the facts of his case, the claimant are entitled to the both the declaratory and financial reliefs sought?**
- 3. Whether the Defendants, if answer to the 1st and 2nd issues are in the negative, entitled to their counter claim before this Honourable court.**

On the other hand, the claimant counsel formulated two issues for the court determination to wit:

- i. Whether the defendant can validly appropriate part of the claimant's money paid as rent to a staff of the Defendant as agency fee in view of the fact that the tenancy between the claimant and the defendant

collapsed and the apartment paid for by the claimant rented to someone else by the defendant?

- ii. Whether considering the evidence before the court, and if the answer to issue one is in the negative whether the claimant are not entitled to the reliefs sought from this honourable court?

I have carefully considered the issues as formulated therein by the defendant counsel and that of the claimant counsel, it seems to me that the 1st issue of the defendant and that of the 1st claimant issue speaks on the same issue, which is an agency. Therefore, I shall take the two issues as one. This equally applied to issue two of the defendant and issue two of that of the claimant, while three of that of the defendant stands and will be answered differently.

From the forgoing three issues in all will be considered by this court. On issue one dealing with agency relationship.

It is trite law, that agency relationship is a fiduciary and consensual relationship between two personal where one person and where the agent can form legal relationship on behalf of the principal.

It may be a business or personal relationship. See *Olufosoye V Fakorede*(1993) 1 NWLR (pt. 272) 747.

agency is a relationship which exist between two persons one of whom expressly or impliedly consent that the other should represent him or to act on his behalf and the other of whom similarly consents to represented the former or so to act. The one who is to be represented or on whom behalf the act is to be done is called the principal and the other who is to represented or act is called the agent. See *Kings Planet Int. V C.P.W.A Ltd*

(2014) 2 NWLR (pt. 1392) 605 CA.

the next question to ask will be how is agency relationship created. In law of the relationship of principal and agent may arise in three ways

- a. **By agreement whether contractual or not, between principal and agent and may be express or implied from the conduct or situation of the parties.**
- b. **Retrospectively, by subsequent ratification by the principal of acts, done on his behalf.**
- c. **By operation of law under the doctrine of agency of necessity.**

See *Ukpanahu V Ayaya* (2011) 1 NWLR (pt. 1227) 61 CA.

Therefore, from this issue formulated the question will be whether an agency relationship exist. In any given situation depends on the precise terminology used by the parties to described the relationship, but on the true nature of the agreement or the exact circumstances of the relationship between the alleged principal (principal and the alleged agent. In effect, the agent can affect the principals legal position by certain acts of the principal. See *Delta Steel Nig. Ltd V American Computer Technology Inc.* (1999) 4 NWLR (PT. 597) 53.

Having said all these, I will now proceed to the argument of the parties on the 1st issues.

The defence counsel on this issue argued that the claimants from their claims before the court claimed that they are entitled to full refund and not meant to pay any sum for agency. They equally contended that they saw the property advertised on www.nigeriaproperty.com and called the GSM number 08052754983 found on the website. The defend went further to state, that, the claimant admitted that under cross-examination that they, claimants had a change of mind and rejected the property for which she paid even went to the extent of procuring interior decoration, materials at the time of the change of mind. That at the time the claimant change their, minds, the 1st defendant has paid the agents. Exhibit DWW3 the 1st Defendant has paid the agent on the 19th of March, 2022. He went further to state that, in the Estate agency business, the custom/principal governing of entities the agent to his commission once he has successfully blocked a transaction between the principal and the tenant. At such a time, the agent is entitled to her commission. That in other for a real estate agent to exist, and be entitled to a commission, it is not enough to show that he introduced a purchaser, but he must also show that the introduction was efficient, cause in bringing about the sale of the property. See *Mike Achoru V INEC* (2010_ LPELR-3588, *NPMC V ALLI BALOGUN* (1961) LLR. 69.

Further argued that the idea behind agency, is that the law acknowledge that a parson does not always need to act in person in certain transactions. He may either employ the services of another person. That once an agent has introduced a potential client, to the principal and the business was successfully, the agent is entitled to his/ her commission. He went further to state that, the evidence before the court clearly showed that the claimant did a unilateral withdrawal/ surrender from the tenancy, the agent is therefore justly entitled to his commission. That the legal principal governing estate agency even allows the defendants to deduct the money for the period it took to get a new tenant. See *Niger Const. & holding Co Ltd V Owoyele* (1988) 4 NWLR (PT. 90) 588 where the court held thus.

“in a landlord and tenant relationship there is no provision for refund of rent of a tenant unilaterally surrenders the premises after the contract been executed” where such a situation occurs, the usual practice is that the tenant will be entitled to receive repayment of rent of the uncovered term from the date the premises is re-let before the expiration of the tenancy. It is unreasonable for a tenant to expect a full-refund of rent after taking possession for some period and thereafter demand to terminate the tenancy”

In summarily stated that, the unchallenged and uncontroverted evidence clearly showed that the claimant reached out to a website. The site does not belong to any of the defendants. The claimant called the number on the advertised properly belonging to one Victory Ozioma of RockmarttNig Ltd an agent, who arranged with the 1st claimant and met with them in the office of the 1st Defendant, after the conclusion of the transaction, the agent was paid vide exhibit DWW2. Therefor pray the court to resolve issue No 1 in favour of the Defendant and held that the defendant was justified in refunding the claimant the sum of money they paid for rent, less the sum paid to the agents as agency fee.

The claimant counsel in arguing the first issue averred that the defendant disclosed in their evidence before the court that the execution of the tenancy agreement by the defendants became unnecessary because the tenancy relationship between the claimant and the defendants became frustrated and the claimant withdraw from the tenancy. Referred the court to paragraph 7 & 8 of the witness Statement on oath of DW1 and paragraph 6 and 8 of the Defendants statement of defence.

That flowing from the above paragraphs it is clear that the tenancy agreement between the claimant and the Defendants collapsed and the claimant did not move into the apartment, they paid for primarily as a result of the relenting of one of two units of the 2nd bedroom flats paid for by the claimant to a third party by the defendants. That by the content of exhibit B1, B2, B3 and exhibit L which are statements of account of the claimants showing that on the 05/05/2022, the defendant took further steps and returned the sum of N1,540,000.00 to the 1st claimants account indicating that the tenancy which the money was paid for would not be entered into further between the claimants and the defendants. He went further to state that the defendants made the state refund of N1,540,000.000 to the 2nd claimants business name account Yues Delight Baskeshse and cat services.

That DW1 confirmed these facts when during cross-examination he stated that it is clear from these avalanche of evidence that the tenancy between the claimants and the defendant collapsed midway because of the inability of the defendants to handover the apartments paid for a clearly captured in the remark column of exhibits B1, B2, B3, and L.

Hold that, it is surprising that the defendant could unilaterally hold unto part of the claimant money amounts to N120,000.00 only as agency fee when the tenancy itself has collapsed. This he posed this Question.

“can there be agency fee in the absence of Tenancy?”

Submitted that the answer is “No” further submitted that the Defendants in paragraphs 4:8-4:13 of their written address that the defendant’s money they are holding unto was purportedly send to one Rockmart Nig. Ltd who according to them purportedly played an agency role on this the claimant stated that they did not know any company called Rockmart Nig. Ltd. Either do they have any dealings with the company or any of it’s employees. On this he stated that the burden in law is on the Defendant who claimed that they had paid N12,000.00 to a third party to lead evidence to proof this fact. This he referred the court to section 136(1) of the evidence Act 2011 which states thus:

“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”

That the burden is shifted to the defendant who alleged that they have appropriated the defendant money to an agent who is not their employee to lead evidence to prove the existence of this fact. Referred the court to case of Tenac (Nig) Ltd. & ors V Obah (2018) LPELR- 49231 (CA) the court of Appeal Stated the law on when the burden of prove is shift thus:

“the law generally is that in civil cases the burden of proof is not static but shifts according to the state of pleadings. It may sometime because the duTy of the defendants to call evidence in proof or rebutted of some issue that has arisen in the case.

The learned claimants counsel went further to state that, the burden of proof shifted to the defendants to have called evidence to prove the allegation of work done by Rockmert Nig. Ltd as an agent which he failed. That the defendant could have called the said victory Ozioma who is alive and works in Abuja or a Director or a staff of the said Rockmart Nig Ltd. To testify before the court to

lead evidence as to any entitlement to an agency as to any entitlement to an agency fee from the claimants. This he stated that nobody was called by the defendants to testified. On this submitted that, this is fatal to the false claim of the defendants to the effect that the money was paid to a certain company as in exhibit DWW3, therefore urge the court to reject that Defendants claims and submissions.

The learned claimant went further to state that, the defendant admitted under paragraph 10 of her statements of defence that the purported agent whom they paid part of the claimant's money to as agency fee is a staff of the defendants one Victory Izioma, one wonder how a staff of the 1st Defendant will somersault and turnaround to pose as an agent of the Defendant to warrant been paid part of the claimant money as agency fee. Similarly, paragraph 12 of the witness statements on oath of PW1 Abang, he stated thus:

“---- excluding the N120,000.00 being agency fee paid to the agent hired by the claimants to secure that apartment.

That the evidence as admitted and stated by DW1 under cross-examination by counsel for the claimant is that, the claimants usually advertised her properties on line via www.Nigeriaproperty.com with a phone number 08052254983 belonging to the Defendants staff Ijeoma Lilian Ezukike for prospective tenant to contact. This he referred the court to paragraph 5 of the claimant statement of facts and paragraph 7 of PW1's witness statement on oath. This he stated that this evidence was never contradicted or controverted by the defendants and therefore urge the court to rely on same. This he referred the court to the case of Omotosho & Anor V Ife North Local Court (2009) LPELR- 8728 (CA). where the court or Appeal stated the law on the effect of an unchallenged/ uncontroverted evidence thus.

“in civil cases, where a party has effectively testified by adducing uncontracted/uncontroverted and unchallenged evidence in support of his pleadings, the trial judge will then scrutinize and look for the relevance of the case before it can rely on the uncontradicted/uncontroverted and unchallenged evidence and then give judgment on that evidence to that party.

The claimant counsel further submitted that, the DW1 admitted when asked that the defendants usually advertised her properties on line. This he refers the court to exhibit 1 which is a picture showing the 1st defendant staff EzurikeIfeoma Advertising the property paid for by the claimant at a higher price posted at www.juji.ng on the 21-4-2022. This he further submitted that where then is the

role of the purported agent when the defendant posted the vacancies on the internet? That it is therefore difficult to appreciate how the defendant submitted in paragraph 12 of PW1 deposition that the purported agent was hired by the claimant to secure the apartment when the evidence before the court is that the apartment was seen advertised on line. Urge the court to reject this submission.

The learned claimant counsel submitted that, DW1 admitted under cross-examination when asked by counsel to the claimant that another tenant had paid and moved into the same set of apartment, paid for by the claimant. DW1 further told the court under cross-examination that the third party who had paid and moved into the apartment have fully paid for the agency fee which the defendants are detaining part of the claimant money for. This he poses this Question

“how many agency fee does the defendant want to receive from one apartment?”

In answering this question, he stated that the defendant action to retain the claimant money in the guise of a purported agency fee already paid for by the new tenant.

Further that, in their evidence before the court, that the defendant by virtue of exhibit 7 tender and admitted in evidence without objection, which is a picture showing the 1st defendant staff one Ezurikelfeoma, advertising the property paid for by the claimant at higher price posted at www.juji.ng on the 21-4-2022 when they were still holding unto the money paid by the claimant as rent for the two sets of the of rooms apartment meaning that they have unilaterally terminated the tenancy agreement with the claimant and by subsequently renting the same apartment paid for by the claimant when still holding unto the claim money. to a 3rd party money.

On the breach of contract, it is the claimant submission that it is settled law that from a party unilaterally rescind or cancel a contract between another party. This he referred to the case of Forte Oil V Ogungbemile (2021) LPELR-52919 (CA).

The court of Appeal stated that law on whether a party to a contract can unilaterally after the terms of contract/agreement thus.

--- the trial judge was not in error in arriving at the finding that the agreement was violated by the termination before the first name period which in any case was open to continuation. The argument of the appellant is misconceive and unfortunate. the appellant under the law and the agreement has no right to

make the demand as part of the agreement. It cannot unilaterally alter the terms of the agreement.

Further submitter that by exhibits B1,B2,B3,B4 and L, DW1 under cross-examination, confirmed the existence of the tenancy transaction, which the defendant were bound to treat as such until it has been terminated by both parties, failure of which the unilateral termination by the defendant and subsequent letting out to a third party is illegal. Further that the defendant reliance on the case of Mike AchoruV INEC (2010) LPELR-3588, NNPC VS AlliBalogun (1961) LLR 69, at paragraph 4.8 and AbdulrahimV Thomas (2029) 12 NWLR (P. 1685) 107 and 126-130, Niger Const. & Holding Co Ltd V Owoyele (1988) 4 NWLR (PT. 90) 588 does not have similar facts to their case and some rather greatly supported the case of the claimant. That the case of Achoru Vs INEC (SUPRA) was a case involving outright sale involving the defendants it's then chairman Prof. Maurice Iwu and has no correlation with their suit, so also the other cases.

Finally submitted that the defendant cannot validly appropriate part of the claimant money paid as rent to a staff of the fact that the Tenancy between collapsed and the Apartment paid for by the claimants rented to someone else by the Defendant and therefore urge the court to resolve this issue in favour of the claimant.

Having considered the evidence as stated in the witness statement on oath and that of the defendant witness statement on oath as well as all the document admitted by the court for both parties, I hold that I prefer the evidence of the claimant to that of the defendant, the clamant evidence was not controverted, while the document tendered fully support the case of the claimant. I therefore hold that the claimant evidence in claim 1, 2, 3, 4, is prefer to the evidence of the defendant. I hold that the claimant is entitled to judgment on claim 1, 2, 3, & 4 as there is no way the defendant can withhold the sum of N120,000.00 paid to the defendant who claims that the money was made for agency fee, as the contract having been terminated by the defendant when he left out the said 2-bedroom apartment of third party. It will be unfair for the defendant to hold on the N120,000.00 in a guise of agency fee.

In view of the forgoing I shall resolved issue 1 infavourof the claimant which cover claim 1, 2, 3, & 4 of the claimant clam. I so hold.

Now on issue two whether the claimants are entitled to both the declaratory and financial relief sought.

In arguing issue, it is the submission of the defendant counsel that the claimants have not established exactly what it lost directly because of their unilaterally surrounded of their tenancy. That there is no evidence that the materials for interior decoration were seized by the defendant and there is no evidence that the claimant eventually did not make use of the said material. Further that special damages must be specifically pleaded and proved against the defendant, it is not merely awarded for the sum of it.

In *LuileNwanewuOnyiorch V Benedict C Onyiorch& Anor* Legal Pedia electronic citation LER/2019 SC 254. 2008. The Apex court per Rhodes Vivour JSC held thus:

“special damages must be specifically pleaded and strictly proved by the claimant. To secede in a claim for special damages the claimant must plead the special damage and give necessary particulars and deduce credible evidence in support. The claimant must satisfy the court as to how the sum claimed as special damages are awarded for actual or exact losses suffered”

On this he stated that, the claimant failed woefully to prove entitlement to any special damages as such same to be dismissed. Further that the supreme court hold in the above stated case thus;

“on no account can a trial judge make his own assessment or speculate on special damages. As assessment would be correct and valid if it was arrived at strictly on the evidence accepted by him as establishing the amount to be awarded.

Therefore, urge the court to dismiss the special damages for lacking in merit.

On the general damage. This he submitted that, the claimant have not been able to show now they are entitled to general damages. That they have not placed materials before the court that will enable the court to presume that the claimant are entitled to the sum of N 10,000,000.00. that they have not established any natural or provable consequences of the act complained of, urge the court to resolve issue No2 infavour of the defendant as the claimant are not entitled to weather special or general damages.

In response, to this issue it is the argument of the learned claimant counsel, that the law is trite that special damages must be strictly pleaded and proved. On this submitted that, the standard of proof just as in all civil matter is proof on the balance of probabilities and not beyond reasonable doubts. Submitted that the

claimant having adduced documentary evidence, including receipts, to substantiate her claim in this regard. Referred this court to the following cases.

- a. **UniperolNig Plc VAdirege (WA) Ltd (2005) 14 NWLR (PT. 946) 563 AT 621 paragraph 1-E, the supreme court held that although tendering receipt could be a good move of proof, it is not on exclusive means of proving special damages, similarly in Obasuyi V Business Ventures Ltd (1995) 7 NWLR (PT. 406 184 Page 194 paragraph G-H the Apex court held that, when it is stated that special damages must be strictly proved. it is not in all cases that a receipt must be tendered and that what amount to strict proof varies with the facts of each case.**

The learned claimant counsel went further to state that the claimant have proved their entitlement to these reliefs by tendering exhibit to prove same such as copies of invoices evidencing the sums expended for interior decoration. Exhibit G & K & exhibit H being a copy of receipt of payment to starlight legal consult. That it is in evidence that the 1st claimant paid deposit sum of N3000,000.00 and the 2nd claimant paid a deposit sum of N200,000.00 totally the sum of N500,000.00 as part payment to Myrach Bedding and interior with balance left to be paid before the defendant later advertised and rented the same apartment to a third party. Exhibit G & K. that the claimant also pleaded and tendered receipt of payment to starlight legal consult exhibit H showing part payment of N200,000.00 and with a balance of N200,000.00 to be paid at a later date. That this evidence shows that the claimants are entitled to the reliefs sought before the court. That the claimant have satisfied the requirement for the grant of specific damages, all the items of expenditure are specifically pleaded. Refers the court to paragraph 29 & 30 of the stamen of claim. And that the award of damages is at the discretion of the court and it is premised on the pleading of the parties and the evidence adduced in support. On this submitted that, considering the arbitrary treatment of the claimant, especially the 1st claimant who was condemned to going from one place to the other in search of another apartment when at the time she was pregnant and the defendant decided to illegally and unilaterally rent out the apartment they paid for to third party and also the financial expenditure of getting a lawyers to write exhibit D,E, and F to the defendant requesting for a refund of their money as well as the moral and psychological stress they had to go through during the shows that the damages sought by the claimant as contained in his statement of facts especially relief 6&7 therefore is the quantum of damages which is reasonable enough in this case, especially considering the facts that the defendant are still holding on to the claimant money till this moment, and urge the court to grant

reliefs 6.7.7 of the statement of claim and reject the defendant submission on paragraph 5.2-5.8 of their written address.

I have carefully considered the argument of both learned counsel on the reliefs sought therein, on this I wish to state that, the object of an award of general damages is to compensate claimant as far as money can do so, for the damages, loss or injury she has suffered. The guiding principle is *restitutio in integrum*. It envisages that a party which has been damaged by the act which is called in question must be put in the position, he would have been if he had not suffered the wrong which he is being compensated for, that is the loss inevitably unavoidsably flowing from the breach. See *MTN (Nig) Comm Ltd V Corporate Comm. Int. Ltd* (2019) 9 NWLR (PT. 1678) 427.

In the award of general damages, a wide spread power is given to the court comparable to the exercise of discretion of the exercise of discretion of the court. It enormous and far-reaching. The measurement of general damages is awarded to assuage such loss, which flows naturally from the defendant's act. It suffices if it is generally averred. It is presumed to be the direct and probably consequence of that complained of. Unlike special damages, it is generally incapable of exact calculation. See *Elf Pet (Nig) Ltd V Umah* (2018 10 NWLR (Pt. 1628) 428 SC.

the claimant counsel on it's written address point 4.38 I quote: the award of damages is at the discretion of the court--

This I have to state that the learned claimant counsel has forgot that on exercise of discretion is a liberty or privilege to decide and act in accordance with what is fair and equitable under the particular circumstance of the particular case., guiding by the spirit and principle of law, in *Udotim & Ors V Ideong & ors* (2013) LPELR- 22132 (ca) 13-14 F-D per Nweze, JCA as he then was, stated thus,

“discretion according to settled authorities, is not on indulgence of a judicial whim, it is the exercise of judicial judgment based on facts and guided by the law or equitable decision,

UBA Ltd v Stalibaw GMBH and Co K.G (1989) LPELR-3400 (SC) it the courts epistemological tool for winnowing for dichotomizing between shadow and substance and distilling equity from colourable gloses and pretence. By it's very character, judicial discretion does not brook any capricious exercise of power according to private fancies and affections.

From the forgoing and by the evidence adduced by the claimant hold that the claimants are of the defendant for having rented the said two-bedroom apartment to a third a party putting the claimant to unnecessary expenses, stress etc.

Hence I shall award the sum of N200,000.00 against the defendants.

On claim 7, being award of post judgment interest on the aggregate at the rate of 10% per annual until full satisfaction of the judgment. This by order 39 rule 7 of the rules of this court. This court may order interest at a rate not exceeding 10% per annum to be paid on any judgment commencing from the date of it or afterwards, as the case may be. The claimant is entitled to interest on the judgment sum of 10% due to reliefs 4, 5, & 6 of the claimant claims.

On the last claim of the cost of action of N400,000.00 only and the counsel fees claimed by the claimant.

On this wish to state that, the law is that the claim should have been specifically proven before it can be awarded. The claim is not clear whether the sum claimed is legal fee paid by the claimant to his counsel or his counsel or as a fee paid to court or out of pocket expenses. On this the claimant's in their evidence before the court, stated that, the sum is paid to the counsel to pursue their claim and letters written to the defendants.

In Divine ideas Lts V Umoru (2007 ALL FWLR (PT 380-) at 1509 paragraph A-D the court of Appeal Abuja Division held thus:

“costs of action or solicitor fees are in the realm of special damages which, must be specially pleaded and strictly proved. In the instant case the appellant did not specially and specifically plead the details of the amount expended by it in the prosecution of the litigation in the trial court. It also did not adduce any evidence in proof of this. It is also deemed that this no specific claim has been abandoned. The appellant is therefore not entitled to be awarded any amount as general damages and or cost of the action in the trial court.

And the court of appeal Benin Division held also that:

“it is unethical and an affront to public policy for a litigant to pass on the burden of his solicitors fees to his opponent in suit.

See Guinness (Nig) Plc V Nwoke (2000) 15 NWLR (PT. 689) 140 to 150 paragraph C per Ibiyeye JCA.

Award of cost is solely at the discretion of the trial court. In awarding the cost, the court will look at the cost incurred in the prosecution of the action and award cost accordingly. See *The Bros Auto-Link Ltd V B.I.A.E. Co Ltd* (2013) 2 NWLR (pt. 1338) page 337 CA. it is equally trite that cost follows events, and a successful party should not be deprived of his cost unless for good reasons. The essence of cost is to compensate the successful part for part of the loss incurred in litigation; costs cannot cure all the financial loss sustain in litigation. It is not meant to be a bonus to a successful party, and not to be awarded on sentiment. See *Ero V Tinubu* (2012) 8 NWLR (pt. 1301) page 104 (CA)

In the light of what I have stated therein. I hold that the claimant deserves an award of cost before this court.

In the final analysis, and based on the evidence adduced and the exhibit admitted, I shall proceed to enter judgment in favour of the claimant. Judgment is hereby entered for the claimant against the defendants as follows:

- 1. A declaration that the letting out to a third party the two units of Two Bedroom Apartments situate at OkeyNwachukwu Street, Dawaki District, FCT Abuja by the Defendants after the claimant had made the complete payment of the total amount of N3,200,000.00 (three Million, Two Hundred Thousand Naira) as annual rent for the said property is illegal, unlawful and a breach of contract.**
- 2. A declaration that the defendants refund of only the sum of N3,080,000.00 Three Million, Eighty Thousand Naira, and their refusal to refund the balance of N120,000.00 (One Hundred and Twenty Thousand) out of the total sum of N3,200,000.00 (Three Million, Two Hundred Thousand Naira being the total and actual sum paid by the claimant as annual rent for the Two Units of the Two Bedroom Apartments situate at OkeyNwachukwu Street Dawaki, District, FCT Abuja is dubious, Illegal, unlawful and thus a breach of contract.**
- 3. A declaration that the claim by the defendant that part of the annual rent was non-refundable and the claim that payment of the sum of N120,000.00 (One Hundred and Twenty Thousand Naira) was made**

to the agent as agency fee amount to a unilateral variation of contract by the defendants and a breach of contract.

- 4. An order of this Honourable court compelling the Defendants to immediately refund the balance of N120,000.00 (One Hundred and Twenty Thousand Naira) to the claimant by crediting the claimant Gtb Account Number 0025077895 with account Name Catherine Agbo in the said sum, being the balance of the Money Paid as annual rent for the two unit of the Two Bedroom Apartment situate of OkeyNwachukwu Street, Dawaki Street, FCT Abuja.**
- 5. An order of this Honourable court awarding the sum of N500,000.00 against the defendants infavour of the claimant as special damages suffered by the claimant as a result of the Defendants wilful breach of contract.**

Particulars of Damages:

- c. Part payment of myrach bedding and interiors by 1st claimant for contains accessories and Transportation N300,000.00.**
- d. Part payment to myrach bedding and interiors by 2nd claimant for contains accessories, and Transportation N200,000.00.**
- 6. on the claim of special damages, I award the sum of N200,000.00 (Two Hundred Thousand Naira) only.**
- 7. As per the claim of N10,000.000.00 it is hereby refused.**
- 8. 10% interest is hereby awarded per annum until full satisfaction of the Judgment.**

As per cost of action. I award the sum of N100,000.00 (One Hundred Thousand Naira) only.

As per the counter claim of the defendant hold that, there is no need going into same as the defendant has failed entirely to be entitled to the claim in the counter. There is nothing to evaluate before the court. Hence the counter claim cannot hold, it is hereby stroke out or treated as abandoned.

That is my Judgment.

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HON. JUSTICE A. Y. SHAFI

APPEARANCE:

1. T. J. Mchianan for the Claimant.
2. Ifeanyi M. Nrialike with Ifeoma I. Okeke for the Defendant.