

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

THIS THURSDAY 06TH OCTOBER, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/986/2022
MOTION NO: FCT/HC/M/3722/2022

BETWEEN:

GEO-ETIN (NIG) LIMITED.....APPLICANT

AND

JOSEPH DANIEL EKUN.....RESPONDENT

JUDGMENT

This instant suit was commenced under the summary judgment procedure of this Honourable court vide writ of summons accompanied by a statement of claim, affidavit in support of Application for summary judgement deposed to by one Shehu Suleiman and a written address of 7 pages. The reliefs sought by the plaintiff in her Application for summary judgment against the Defendant are as follows:

- 1. An order of this Honourable court entering summary judgement ejecting the defendant and every other occupant from flat A1 plot 23, Democracy Crescent, Gaduwa Abuja, with appurtenances thereto he holds of the claimant as a yearly tenant in a tenancy which has lapsed by effluxion of time on the 31st day of January, 2022.**
- 2. An order of the Honourable court entering summary judgement mandating the defendant to pay to the claimant the sum of N92,000.00 (Ninety-Two Thousand Naira) being the defendant's outstanding balance of rent flat A1, plot 23, Democracy Crescent,**

Gaduwa, Abuja for the rental period commencing on 1st of February, 2021 to 31st January, 2022.

- 3. An order of the Honourable Court entering summary judgement mandating the defendant to pay to the claimant the sum of N95,833.33 per month from the 1st day of February, 2022 till the Defendant relinquishes possession of the apartment being damages for unlawful use and occupation by the defendant of the two (2) bedroom apartment situate at flat A1, plot 23 Democracy Crescent, Gaduwa, Abuja with Appurtenances thereto from the 1st day of February, 2022.**
- 4. An order of the Honourable Court entering summary Judgement granting the cost of instituting and prosecuting this suit assessed at N750,000.00.**
- 5. Post judgement interest of 10% per annum on the judgement sum from the date of judgement until the judgement sum is fully liquidated.**

The grounds upon which this application is predicted are as follows:

- 1. On the 17th day of January, 2019 day of January, the claimant agreed and offered to let out Flat A1 in the aforementioned (“the Flat”) with appurtenances thereto to the Defendant for a period of Two (2) years certain commencing from 1st of February, 2019 to 31st January, 2021 at rental value of N2, 400,000.00 (Two Million, Four Hundred Thousand Naira).**
- 2. At the expiration of the defendant’s rent on 31st January, 2022, the Defendant’s tenancy in the claimant’s apartment lapsed by effluxion of time but the Defendant did not surrender to the claimant possession of the Apartment with appurtenances he held of the claimant nor did he renew his tenancy by paying the rent for a new term.**
- 3. On 31st January, 2022 when the defendant’s tenancy lapsed by effluxion of time and the Defendant failed to renew his tenancy, the defendant ceased to be the claimant’s tenant.**
- 4. On the 22nd February, 2022, the claimant, acting through his lawful agent and attorney, caused to be served on the Defendant the Statutory Notice to Tenant of owner’s intention to apply to court to**

- Recover possession which was received and signed for by the defendant's wife.**
- 5. Till date, the defendant has continued to unlawfully hold over the flat with appurtenances he holds of the claimant, occupy and use same instead of honourable vacating despite several requests.**
 - 6. The claimant is entitled to the payment of the sum of N92, 000.00 (Nine-Two Thousand Naira) being the defendant's balance of the rent for the rental period commencing of 1st of February, 2021 to 31st January, 2022.**
 - 7. The claimant is entitled to payment of the sum of N95,833.33 per month being damages for unlawful use and occupation of the Flat by the Defendant from the 1st February, 2022 till the Defendant relinquishes possession.**
 - 8. Also, as result of the refusal of the Defendant to renew his tenancy or wilfully relinquish possession of the Apartment he holds of the claimant, the claimant has had to institute and prosecute this suit at the cost of N750,000.00 (Seven Hundred and Fifty Thousand Naira) and is entitled vide agreement of parties to be indemnified.**
 - 9. The defendant does not have a good defence to the claims of the claimants.**

In support of the Application for summary judgement is an affidavit in support of 3 pages deposed to by one Shehu Suleiman, an annexure marked exhibit A, B, C, D, E, F & G and a written address of 9 pages whereof a sole issue was formulated for determination to wit:

“whether the claimant/Applicant has made out a case to be granted summary judgement in the instant case”

In order to resolve the issues in this application I shall adopt the issue distilled by learned counsel to the claimant/Applicant as follows:

“whether the claimant/Applicant has made out a case to be granted summary judgement in the instant case”

By her affidavit in support of the application for summary judgment, the Claimant/Applicant has shown that her claim vide her writ of summons, is for recovery of possession, arrears of rent and cost of action.

The claimant/ Applicant who served the processes through the bailiff of this court dated the 10-05-2022, proof of service collected by the defendant but refused to acknowledge same.

The claimant/Applicant counsel moved the application for summary judgement, with the attached affidavit of 3 pages and a written address wherein the written address he adopted same as his argument in support of the application for summary judgment and urged the court to set down the suit for summary judgement.

In the resolution of the issue for determination, I must however observe that the instant case/suit was commenced under the summary judgement procedure of this Honourable court. The whole purpose of a summary judgement procedure is to ensure justice to the plaintiff and minimize delay where there is obviously no defence to his claim and thus prevent the grave injustice that might occur through protracted and immensely frivolous litigation. The object of this procedure is to enable the court deal summarily with the plaintiff's claim and enter quick judgement once it is clear that the defendant does not have any defence to such claim, in order to save time, and avoid unnecessary expense on litigation. The procedure is designed to secure justice and avoid the injustice likely to occur when there is indeed no genuine defence on the merit to the plaintiff's claim. The procedure is employed to shorten the hearing of a suit where the claim is for a liquidated sum. **See Ifeanyichukwu Trading Investment Ventures Ltd & Anor Vs Onyeson Community Bank (2015) 17 NWLR (PT. 1487) 1 at 24 Paragraph C-E per Ariwodi (JSC).**

The summary Judgement procedure is for disposing of cases which are virtually uncontested I with dispatched. It applies to cases where there can be no reasonable doubt that the plaintiff is entitled to judgment and where it is expedient to allow a defendant to defend for mere purpose of delay. It is for the plain and straightforward, not for the devious and crafty. **See Lewis V United Bank for Africa Plc (2016) 6 NWLR (PT. 1508) 329 at 349.**

Arising from the above in the instant case, for the claimant to be entitled to summary judgement pursuant to the rules of this court I must state and it is trite law that the claimant must succeed on the strength of his own case and not to rely on the weakness of the defendant's case. In other words, by the rules of this

Honourable court, by the rules of this Honourable court the evidence in support of the claim or reliefs sought must be unassailable.

In the instant case/suit, I have perused the claims or reliefs sought by the claimant in her Application for summary judgement, the grounds, upon which the application is predicated and the affidavit in support of Application for summary judgement and the written address wherein a sole issue was formulated where the court has adopted same.

In the written address the claimant counsel avers that by virtue of order 11 of the High Court of the FCT, (civil procedure) Rules 2018, the Honourable court is empowered to enter summary judgement where the claimant believes that there is no defence to his claim and the defendant has no defence to the case of the claimant, submitted that to succeed on this head of relief, the claimant must prove that it has fulfilled the requirement of the law on recovery of premises with respect to services of statutory notices under the recovery of premises Act CAP 544. Laws of the FCT.2007.

Court: by the affidavit sworn to by the bailiff of this court. It seems to me that claim No 1 has been overtaken by events. In the said affidavit dated the 23rd June, 2022 he stated thus:

“The defendant Joseph Daniel (Ekun) has vacated the premises at Flat A1, plot 20, Democracy Crescent, Gaduwa Estate, Abuja and that all effort made to serve him personally proved Abortive)

Having been overtaken by events there is no need for the court to labour to address the issue of claim No: 1. This court is left with claim 2, 3, 4, & 5 to adjudicate upon.

On this I shall only deal on issues 2,3,4, & 5, in doing so will take claim 1 & 2 together. On this, looking at the statement of claim on paragraph 5 where it was stated thus:

On the 17th day of January, 2019, the claimant agreed and offered to let out flat A1 in the aforementioned property (the flat) with appurtenances thereto to the defendant for a period of two (2) years certain commencing from 1st February, 2019 to 31st January, 2021 at the rental value of N2, 400,000.00 (Two Million, Four Hundred Thousand Naira).

Paragraph 6, that on the 2nd February, 2021, the claimant acting through his lawful attorney and agent, issued a rent renewal demand to the defendant with respect to the aforementioned flat for the rental period commencing from 1st of

February, 2021 at a reviewed rental value of N1, 150,000.00 (one Million One Hundred and fifty Thousand Naira, which translate to N95,833.33 Per month. See Exhibit C. that the defendant in clear breach of the terms only paid the sum of N1,058,000.00 (One Million, Fifty-Eight Thousand Naira in renewal of the rental period commencing from 1st of February, 2021 to 31st January, 2022 leaving an outstanding balance of the sum of N92,000.00 (Ninety-two Thousand Naira) only. On this, a letter to the defendant by the claimant dated 29th March, 2022 is annexed as Exhibit D & F.

On the issue of damage for unlawful use and occupation of the flat by the defendant from the 1st February, 2022 till the defendant relinquishes possession, the claimant claims from the defendant the sum N95,833.33 Per month from 1st February, 2022. This he referred the court to clause 1.0 (xiii) of the tenancy agreement between the parties which stipulates thus:

“xiv. To vacate the premises at the expiration of the present tenancy and that if for any reason the tenant over stays or holds over the rental premises with the landlord, the tenant undertakes to indemnify the landlord for all cost, expenses, Legal fees and mesne profits incurred for the unlawful use and occupation of the rented premises”.

On legal fee, reference was made to clause 1.0 (xiii) of the tenancy agreement as provided above and based on the above in instituting this action had incurred the sum of N750, 000.00 (Seven Hundred and Fifty Thousand Naira).

Exhibit G being the solicitors receipt acknowledged letter dated the 4th day of March, 2022.

Thus, by the statement on oath of the plaintiff, and the documents referred to in support of summary judgement it is crystal clear that the plaintiff has satisfied all the conditions or ingredients to entitle her to judgement under order II rule 1 FCT, High Court (civil Procedure) Rules 2018. In fact, apart from the credible evidence adduced in support of her claims, the defendant who by all indication has no defence to the plaintiff's claim stood out of the case and woke up from his slumber, where the case has indeed been adjourned for judgement, too late to cry when the heads is off. In other words, the case of the plaintiff is unassailable and as rightly stated in the case of **Suleiman Moshood V Uche Akubi (2014) LPELR-24005**, where the court of Appeal held thus:

“it is trite law that under summary judgement procedure where it is obvious that a defendant does not have a defence on the merit, a court of law will not allow such a defendant to

dribble the plaintiff whose case is unassailable. The essence of the procedure is to alleviate undue delay and loss of time and resource”

In the instant case, by the facts and evidence before me, I will not allow the defendant to assume the role of the goal keeper trying to dribble the Backman to secure a goal out of the plaintiff from judgement in this case.

Hence, therefore, the plaintiff having satisfied the conditions under order II rule I of the Rules of this court, judgement is hereby entered for the plaintiff.

Before pencilling the final judgement, I shall consider claim 4 of the plaintiff claim, where he claims the sum of N750,000.00 as cost of instituting and prosecuting this instant suit.

Without ado, wish to state the award of cost is always at the discretion of the court, but the court must exercise the discretion judiciously and judiciary See **Akinbobola V PlissonFisko (1991) 1 SC (pt. 11)** I usually costs follows the event and are not awarded as a punitive measure nor are they designed or meant to be a bonus to the successful party. And although granted by way of an indemnity to a successful party, an unsuccessful party ought not to be damnified for no good reasons, but for the purpose of meeting the legitimate expenses of the successful party either wholly or partially as the court may see fit.

Though in the case of **Guinness NigLtd V Nweke (2000) 15 NWLR (PT.689) 140 at 150** where the court held as follows:

“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”

Notwithstanding the above case, there is abundant authority in support of the proposition that a successful party in an action, unless he misconducts himself, is entitled to cost as of right. See **Haco Ltd V Brown (1973) 4. SC and Nwekeson V Onuigbo (1991) 3 NWLR (PT.178) 125.**

In summary therefore, I shall enter judgement for the plaintiff as follows:

- a. The defendant to pay the sum of N92,000.00 (Ninety-Two Thousand Naira being the defendant’s outstanding balance of rent flat A1, plot 23 Democracy Crescent, Gaduwa, Abuja for the rental period commencing on the 1st February, 2021 to 31st January, 2022.**
- b. The cost of action of N100,000.00 (One Hundred Thousand Naira) only.**

c. The post judgement interest of 10 % per annum on the judgement sum from the date of Judgement until the judgement sum is finally liquidated.

As per claim 3 since the defendant has vacated from the apartment this head of claim is deemed abandoned.

This is my judgement.

.....

HON. JUSTICE A. Y. SHAFI

APPEARANCE:

1. O. F. Osogwa holding the brief of E. Ebie for the defendant/Applicant