

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 20 WUSE ZONE 2 ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU
ON THE 31ST OF MARCH, 2021
SUIT NO: FCT/HC/CV/2436/19

BETWEEN:

S. UMAR & CO.

(SUING THROUGH HER LAWFUL ATTORNEY MOHAMMED SALIHU)

MOHAMMED SALIHU ----- CLAIMANT

AND

ABUMARA GBL VENTURES LTD ----- DEFENDANT

*VIC-CLIFF OBIAYOR holding the brief of OSENI ABOGHAYEME for the
Claimant.*

Defendant not in court and not represented by Counsel

JUDGEMENT

The Plaintiff filed a Writ of Summons dated the 12th day of July, 2019 wherein the following reliefs are prayed for:

1. The sum of **₦10,250,000 (Ten Million, Two Hundred and Fifty Thousand Naira)** being arrears of rent from 28th July, 2017 to 16th April 2019 in respect of five bedroom bungalow with two rooms Boys Quarters situate at House 22, Ajase Street, Wuse Zone II Abuja which the defendant rented from S. Umar & Co at a yearly rent of **₦6,000,000.00 (Six Million Naira)** per annum.
2. 10% interest of the judgement sum per annum from the 27th day of November, 2018 until the day of judgement and 10% interest per annum until judgement sum is finally liquidated.

The action was instituted under the undefended list and supported with a twenty nine (29) paragraph affidavit of one Mohammed Salihu, a Partner in the Law Firm of S. Umar & Co, the Landlord of the defendant. The deponent averred that the defendant was a yearly tenant whose tenancy commenced from 18th November, 2012 at a rate of **₦6,000,000 (Six Million Naira)** per annum. He defaulted in paying the total rent of the tenancy for a period of 28th November, 2017 to 28th November, 2018 by making a part-payment of **₦4,000,000 (Four Million Naira)** leaving a balance of **₦2,000,000 (Two Million Naira)**. And also defaulted for the period of 28th July, 2018 and 18th April, 2019 when he delivered possession of the premises to the Claimant. The rent for the period is the sum of **₦2,250,000 (Two Million Two Hundred and Fifty Thousand Naira)**. And that the total indebtedness of the Defendant is **₦10,250,000 (Ten Million Two Hundred and Fifty Thousand Naira)** from 28th July, 2017 to 18th April, 2019.

The Deponent made both written and oral demands for the arrears of rent from the Defendant and upon his refusal he was served with Notice of Owners Intention to Recover Possession. Attached to the affidavit are Exhibits A – E, the Tenancy Agreement, the Letter of Demand for Outstanding Rent, with the acknowledgement copies and the Notices served on the Defendant with the Power of Attorney donated to the Claimant by S. Umar & Co on the 29th day of January, 2019 to manage the property and also to sue in the name of its Attorney in law. He further averred that the Defendant has no defence to this action and urged the Court to enter judgement as claimed.

In response, the Defendant filed an application for enlargement of time within which to file his Memorandum of Appearance, Notice of Intention to Defend with an affidavit as the time allowed by the Rules of Court has elapsed. The affidavit has one paragraph of one Abraham Itah Udoh. From the record, the Defendant's Counsel did not move the application for extension of time. It is deemed abandoned and struck out accordingly. It is also worthy of note that the said application did not carry a motion number but rather the suit number. This omission was that of the Registry which should not be visited on the Counsel or Litigant. The Defendant's Counsel had participated in the proceeding, the court is therefore obliged to consider the Notice of Intention to Defend and the affidavit in support filed by the Defendant, whether it discloses any defence on the merit. The Claimant's Counsel also did not object to this procedural error on the part of the Defendant.

Now to the affidavit of the Defendant; in paragraph 46(c) and (d) the deponent to the affidavit claimed that he was informed by one Mr. Charles Ikenta the Managing Director of the Defendant on the 10th day of September, 2020 and he verily believes him that;

(c) Contrary to the deposition in paragraph 9 and 10 of the Claimant's affidavit in support of the undefended list, the Defendant paid her rent in full for the rental period of 28th November 2017 to 27th November, 2018.

(d) That the money due for the rental period granted in paragraph 11 of the Claimant's affidavit in support of the undefended list was used to offset the amount which the Defendant used in repairing the apartment

by way of set-off as agreed by parties. The Deponent went on to describe what he claimed he used the rent to offset as roof leakages. It is on this basis that Learned Counsel to the Defendant urged the Court to transfer the matter to the general cause list.

It is trite that an action instituted under the undefended list procedure is determined on affidavit evidence. Parties must therefore make full disclosure of material particulars in proof or disproof of their case. The affidavit in support of the Notice of Intention to Defend must condescend upon particulars and should as far as possible frontally deny the claim of the Claimant and support with documents if need be in order to raise a defence on merit or triable issue by the Court. It is therefore not just enough for the Defendant to claim that he paid rent for the disputed period without supporting his claim with credible proof as same. See **GOD'S LITTLE TANNERY V NWAIGBO (2004) LPELR 7373 CA, ATAGUBA & CO V GURA (NIG) LTD (2005) 8 NWLR (PT. 927), TAHIR V KAPITAL INSURANCE LTD (2006) 13 NWLR (PT 997) 452.**

See also **SAMABEY INTERNATIONAL COMMUNICATIONS LTD V CELTEL NIG LTD (2013) LPELR 20758 CA** where the Court of Appeal held:

“Now for an affidavit to constitute a defence on the merit, the defendant must set out the defence in the affidavit and not simply say he has a defence. The affidavit must show reasonable grounds of defence that there is some dispute between the parties requiring to be gone into. OSIFO V OKOGBO COMMUNITY BANK LTD (2006) 15 NWLR (PT. 1002) 250. Under the undefended list procedure, the defendant’s

affidavit must condescend upon particulars and should as far as possible deal specifically with the plaintiff's claim and affidavit and state clearly and conversely what the defence is and what facts and documents are relied on to support it. The affidavit in support of the Notice of Intention to Defend must of necessity disclose facts which will at least throw some doubts on the case of the plaintiff. A mere general denial of the Plaintiff's claim and affidavit is devoid of any evidential value and as such would not have disclosed any defence which will at least throw some doubts on the Plaintiff's claim. – Per Aburu JCA.

There is no doubt that the Defendant's claim that he paid rent is devoid of any merit, it is not supported by any particulars and therefore cannot be said to have effectively contradicted the claim of the Claimant. The claim therefore has no evidential value.

Furthermore, I endorse the argument of the Learned Counsel to the Claimant that the defence by the Defendant that he used the rent to offset the cost of improvement or repairs on the property is also lame defence. A tenant who claims to carry out improvements on a property and wish to use that as a defence must show that he had the consent of the Landlord before carrying out such improvement. This is in tandem with the provision of Section 15 of the Recovery of Premises Act which provides:

"A tenant shall not be entitled to compensation in respect of any improvement unless he has executed it with the previous consent in writing of the Landlord."

The Defendant have failed to exhibit any written consent of the Landlord before the improvement he claimed to have carried out. He is not entitled to any compensation in the absence of any written consent of the Landlord. And I so hold. The defence put up by the defendant lack merit and it is hereby discountenanced. The Claimant's claim succeeds as prayed in the Writ of Summons. The defendant is to make the payments with 10% interest on the judgement sum per annum from the 27th day of November, 2018 till today bearing in mind the inflation cost and the depreciation of the value of the Naira. And also pay 10% interest per annum until the entire sum is fully liquidated.

Signed

Hon. Judge

31/3/2021