

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE GWAGWALADA JUDICIAL DIVISION

HOLDEN AT GWAGWALADA- ABUJA

THIS THURSDAY THE 5TH DAY OF OCTOBER, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/807/22

BETWEEN:

YOBE INVESTMENT COMPANY LIMITED.....CLAIMANT

AND

- 1. ABUJA METROPOLITAN MANAGEMENT COUNCIL**
- 2. THE AUDITOR GENERAL FCT AREA
COUNCILS THIRD DEFENDANTS/RESPONDENTS**

JUDGMENT

The claimant by a writ of summons dated the 14th December, 2022 and filed on the same date the 14th December, 2022 claims against the Defendant as follows.

- 1. An order of this Honourable court for the Defendants to vacate and deliver immediate possession of the ground first and third floors of Yobe House plot 1001 Central business District FCT, Abuja with its appurtenance to the claimant forthwith in a good and tenantable condition.**
- 2. Mesne profit for the use and occupation of the property assessed pro rata at monthly rate of #1,305,186.67k (One million, three hundred and five thousand, one hundred and eighty-six naira, sixty-seven kobo) from 15th June 2022 being the next day after the expiration till the date the**

Defendants hand over peaceful possession of the property with its appurtenance to the claimant in a good condition.

- 3. Ten percent (10%) interest of the entire judgment sum per annum from the date judgment is delivered to the date the defendant hand over vacant possession of the demise property to the claimant and pays the entire Judgment sum.**
- 4. The sum of five million only(#5,000,000.00) as general damages for holding over the demised premises illegally.**
- 5. Cost of the suit.**

Accompanying the writ are claimants statement of claim, claimants witness statement on oath, certificate of pre-action counseling with copies of the following:

- a. Quit notice dated the 3rd December, 2020.**
- b. Copy of a letter dated 22/7/2021**
- c. Copies of the seven(7) days' notice of owner's intention to recover possession dated 1st December, 2021.**
- d. Copies of the seven (7) days' notice of owner's intention to recover possession dated 22/08/2022**
- e. Copy of the letter dated 4/11/2022.**
- f. Copy of the letter dated 15/11/2022.**
- g. Copy of the letter dated 17/11/2022.**

The Defendants were in receipt of the processes of this court, acknowledged by Abuja metropolitan management council dated the 29/2/2023 for the 1st Defendant and acknowledged for the 2nd Defendant through one Sunday Gabriel Oduh OAG FCT, dated the 17/02/2023 at the office of the auditor General for FCT, Area Council Abuja.

This matter was mentioned dated the 6th March, 2023 where one Joseph E. Chukwuemeka appeared for the claimant and one Felix Udo Ibanga with Chukwudi Obuakwa appeared for the Defendants.

The Defendant's counsel informed this court that the originating processes was brought to FCT, Administration last week Friday and having looked at the facts

and circumstances the FCT, Administration is desirous of settling this matter out of court. In compliance with the rules of this court, order 26 of the High Court of FCT, Civil Procedure 2018 this matter was adjourned to 27-4-2023 to allow parties explore possibilities for settlement out of court.

Section 26 provides;

“When a matter comes before the court for the first time, the Judge shall in circumstance where it is appropriate, grant to the parties, time not more than 30days within which parties may explore possibilities for settlement of the dispute.”

On the 27-4-2023 both counsels were in court, the claimant counsel informed the court that parties have stated discussion and urged the court to obliged them with only two weeks to file the terms of settlement. In response the Defendant counsel pleaded that the two weeks was too close and urged the court to give them more weeks. The matter was then adjourned to 13-06-2023 for report of settlement.

On the 13-06-2023, both counsel were in court, The claimant counsel informed the court the parties are still talking and then applied for another date. This the defendant counsel did not object to the application made by the claimant counsel and the matter was adjourned to 11-07-2023 for adoption of terms of settlement.

On the 11-07-2023 both counsel were in court, the claimant counsel informed the court that the matter is for adoption of terms of settlement, and unfortunately the settlement has failed and consequent upon that, has filed a motion which has been served on the defendants and the defendant has not filed any counter.

In response by the defense counsel, stated that they are in someone house and will not be refusing. That they have been pushing to allow them settle and that from the words of the defendant they have no defense to the claimant’s case before the court. Therefore, urged the court to allow the claimant to move his motion.

The motion with motion No;FCT/HC/GAR/M/954/2023 brought pursuant to order 21 rule 9 and order 43 rule 1 of the High Court of the FCT Civil Procedure Rule 2018 and under the inherent Jurisdiction of this court. The motion prays for the following orders:

- 1. An order of this honorable court for Judgment on the pleadings of the claimant on the grounds that no answer has been filed by the Defendant to the claim of the claimant.**

2. And for such order or further orders this court may deem to fit out to make in the circumstance.

Attached to this motion is an affidavit of 5 paragraphs deposed to by one Mrs Ngozi Awuzie of plot 105 Haman Maiduguri Street B. Close 32 crescent 3rd Avenue Gwarinpa FCT, and a written address in support of motion on notice of 3 pages wherein a sole issue was distilled for determination to wit;

“Whether in the circumstance, the Honorable court can grant the prayers of the claimant/Applicant as contained in the motion paper in the interest of justice?”

The motion was moved and the order sought therein was granted.

The brief facts of this matter is as follows;

- 1. The Claimant is a company registered in Nigeria in accordance with the Companies and Allied Matters Act (CAMA) and the registered office at No. 3 Amusement Park Street, Off Buka Abba Ibrahim Way, Games Village Damaturu Yobe State outside the jurisdiction of this Honourable Court.**
- 2. The Defendants are in present possession and occupation of the property which consists of Ground, First and Third Floors of Yobe House Plot 1001 Central Business District, FCT Abuja and the Defendants have refused to deliver up possession despite the expiration of the term demised.**
- 3. The Claimant avers that the Claimant and the 1st Defendant entered into a tenancy agreement dated 16th June, 2015 for a duration of One (1) year certain commencing from the 16th June, 2015 to 15th June, 2016 with option to renew and the amount payable as rent per annum is the sum of Fifteen Million, Six Hundred and Sixty-Two Thousand, Two Hundred and Forty Naira Only (#15,662, 240.00). The Claimant hereby pleads the tenancy agreement dated 16th June, 2015.**
- 4. The Claimant donated a power of attorney to Mohammed Abacha & Co to manage and superintend all that property at Yobe Investment House Plot 1001 Central Business District, (CBD) Abuja. A copy of the power of attorney shall be found at the trial.**
- 5. The 1st Defendant at all material times after the transaction puts its office of the Auditor General FCT Area Councils i.e. 2nd Defendant in occupation and possession of the demised premises at Yobe Investment House Plot**

1001, First Avenue Central Business District (CBD) Abuja but continues to pay rent to the Claimant.

- 6. The Claimant vides a letter dated 3rd December, 2020 issued the Defendants with notice to quit/No renewal of the tenancy relationship determining the tenancy between the parties. A copy of the quit notices dated 3rd December, 2020 are pleaded and shall be found during trial.**
- 7. The Claimant avers that at the expiration of the 6 Months' Notice to quit on the 15th June, 2021 the 2nd Defendant's vides a letter dated 22nd July, 2021 requested and pleaded for extension for 3 Months within which to vacate the demised premises. A copy of the letter dated 22nd July, 2021 is pleaded and shall be found at trial.**
- 8. The Claimant vides a letter dated 28th July, 2021 approved the request of the Defendants but requested and demanded for payment of the rent for the 3 Months on pro-rata. A copy of the letter dated 28th July, 2021 is pleaded and shall be found at trial.**
- 9. The Claimant avers that at the expiration of the 3 Months gracious extension the Defendants refused, failed and neglected to vacate the demised premises but pleaded albeit orally for further extension of the period within which to vacate and deliver possession to be on or before 15th June, 2022.**
- 10. The Claimant avers that they did not approve the further extensions sought by the Defendants but rather served on the Defendants Seven (7) days notices of owners' intention to recover possession dated 1st December, 2021. Copies of the Seven (7) days' notice of owner's intention to recover possession dated 1st December, 2021 is pleaded and shall be found at trial.**
- 11. The Claimant avers that despite the expiration of the Seven (7) days' notice of owner's intention to recover possession dated 1st December, 2021 the Defendants refused, failed and neglected to yield up possession and vacate the premises.**
- 12. The Claimant avers that vides a letter dated 25th August, 2022 the Claimant served yet again another Seven (7) days' notice of owner's intention to recover possession on the Defendants but they refused, failed and neglected to yield up possession and vacate the demised premises. Copies of the Seven (7) days' notice of owner's intention to recover possession dated 22nd August, 2022 is pleaded and shall be found at trial.**

- 13. The Claimant avers that after the services of the requisite notices to wit Landlord's Seven days' notice of owner's intention to apply to court to recover possession dated 25th August, 2022 the Defendants orally promised to vacate and deliver up possession of the demised premises on or before the end of September, 2022.**
- 14. The Claimant avers that after more than 2 Months after the Defendants promised to vacate and deliver vacant possession of the demised premises to the Claimant the Defendants failed, refused and neglected to do so which warranted the Claimant to extend further courtesies on the Defendants by writing a further letter titled final demand notice dated 4th November, 2022. A copy of the letter dated 4th November, 2022 is pleaded and shall be found at trial.**
- 15. The Claimant avers that upon the receipt of the Claimant's letter dated 4th November, 2022 the Defendants responded vides a letter dated 15th November, 2022 but received on 16th November, 2022 wherein the Defendant appealed passionately for extension of period of Six (6) Months from 15th June, 2022 to 31st December, 2022 within which to vacate from the demised premises. The Defendants also undertook to pay the Six (6) Months' mesne profit upon demand by Claimant. A copy of the letter dated 15th November, 2022 is pleaded and shall be found at trial.**
- 16. The Claimant avers that by a letter dated 17th November, 2022 the Claimant's graciously accepted the Defendants' passionate appeal for extension and granted Six (6) Months extension to the Defendants from 15th June, 2022 to 31st December, 2022 within which to vacate the property and deliver up possession on the condition that the mesne profit should be paid within 14 days of the receipt of this letter. A copy of the letter dated 17th November, 2022 is pleaded and shall be found during trial.**
- 17. That Defendants has failed, neglected and refused to pay the Claimant within 14 days the sum of Seven Million, Eight Hundred and Thirty-One Thousand, One Hundred and Twenty Naira only (#7, 831, 120.00) being the mesne profit from 15th June, 2022 to 31st December, 2022 assessed pro rata at monthly rate of #1, 305, 186.67k (One Million, Three Hundred and Five Thousand, One Hundred and Eighty -Six Naira, Sixty-Seven Kobo) per Month.**

And the claimants witness written statement on oath is reproduced below:

- 1. That I am the Manager of Mohammed Abatcha & Co the attorney to the Claimant by virtue of which I am conversant with the facts deposed to in this affidavit.**
- 2. That I have the consent of my employer and the Claimant to make this statement on oath and the facts contained herein are within my personal knowledge and elicited in the course of acting in the capacity aforestated, save if otherwise stated.**
- 3. The Claimant is a company registered in Nigeria in accordance with the Companies and Allied Matters Act (CAMA) and the registered office at No. 3 Amusement Park Street, Off Buka Abba Ibrahim Way, Games Village Damaturu Yobe State outside the jurisdiction of this Honourable Court.**
- 4. The Defendants are in present possession and occupation of the property which consists of Ground, First and Third Floors of Yobe House Plot 1001 Central Business District, FCT Abuja and the Defendants have refused to deliver up possession despite the expiration of the term demised.**
- 5. The Claimant and the 1st Defendant entered into a tenancy agreement dated 16th June, 2015 for a duration of One (1) year certain commencing from the 16th June, 2015 to 15th June, 2016 with option to renew and the amount payable as rent per annum is the sum of Fifteen Million, Six Hundred and Sixty-Two Thousand, Two Hundred and Forty Naira Only (#15,662, 240.00). The tenancy agreement dated 16th June, 2015.**
- 6. The Claimant donated a power of attorney to Mohammed Abatcha & Co to manage and superintend all that property at Yobe Investment House Plot 1001 Central Business District, (CBD) Abuja. A copy of the power of attorney shall be found at the trial.**
- 7. The 1st Defendant at all material times after the transaction puts its office of the Auditor General FCT Area Councils i.e. 2nd Defendant in occupation and possession of the demised premises at Yobe Investment House Plot 1001, First Avenue Central Business District (CBD) Abuja but continues to pay rent to the Claimant.**
- 8. The Claimant vides a letter dated 3rd December, 2020 issued the Defendants with notice to quit/No renewal of the tenancy relationship**

determining the tenancy between the parties. A copy of the quit notices dated 3rd December, 2020 shall be found during trial.

- 9. That at the expiration of the 6 Months' Notice to quit on the 15th June, 2021 the 2nd Defendant's vides a letter dated 22nd July, 2021 requested and pleaded for extension for 3 Months within which to vacate the demised premises. A copy of the letter dated 22nd July, 2021 shall be found at trial.**
- 10. The Claimant vides a letter dated 28th July, 2021 approved the request of the Defendants but requested and demanded for payment of the rent for the 3 Months on pro-rata. A copy of the letter dated 28th July, 2021 shall be found at trial.**
- 11. That at the expiration of the 3 Months gracious extension the Defendants refused, failed and neglected to vacate the demised premises but pleaded albeit orally for further extension of the period within which to vacate and deliver possession to be on or before 15th June, 2022.**
- 12. The Claimant did not approve the further extensions sought by the Defendants but rather served on the Defendants Seven (7) days notices of owners' intention to recover possession dated 1st December, 2021. Copies of the Seven (7) days' notice of owner's intention to recover possession dated 1st December, 2021 shall be found at trial.**
- 13. That despite the expiration of the Seven (7) days' notice of owner's intention to recover possession dated 1st December, 2021 the Defendants refused, failed and neglected to yield up possession and vacate the premises.**
- 14. That vides a letter dated 25th August, 2022 the Claimant served yet again another Seven (7) days' notice of owner's intention to recover possession on the Defendants but they refused, failed and neglected to yield up possession and vacate the demised premises. Copies of the Seven (7) days' notice of owner's intention to recover possession dated 22nd August, 2022 shall be found at trial.**
- 15. That after the services of the requisite notices to wit Landlord's Seven days' notice of owner's intention to apply to court to recover possession dated 25th August, 2022 the Defendants orally promised to vacate and deliver up possession of the demised premises on or before the end of September, 2022.**
- 16. That after more than 2 Months after the Defendants promised to vacate and deliver vacant possession of the demised premises to the Claimant the**

Defendants failed, refused and neglected to do so which warranted the Claimant to extend further courtesies on the Defendants by writing a further letter titled final demand notice dated 4th November, 2022. A copy of the letter dated 4th November, 2022 shall be found at trial.

17. That upon the receipt of the Claimant's letter dated 4th November, 2022 the Defendants responded vides a letter dated 15th November, 2022 but received on 16th November, 2022 wherein the Defendant appealed passionately for extension of period of Six (6) Months from 15th June, 2022 to 31st December, 2022 within which to vacate from the demised premises. The Defendants also undertook to pay the Six (6) Months' mesne profit upon demand by Claimant. A copy of the letter dated 15th November, 2022 shall be found at trial.

18. That by a letter dated 17th November, 2022 the Claimant's graciously accepted the Defendants' passionate appeal for extension and granted Six (6) Months extension to the Defendants from 15th June, 2022 to 31st December, 2022 within which to vacate the property and deliver up possession on the condition that the mesne profit should be paid within 14 days of the receipt of this letter. A copy of the letter dated 17th November, 2022 shall be found during trial.

19. That Defendants has failed, neglected and refused to pay the Claimant within 14 days the sum of Seven Million, Eight Hundred and Thirty-One Thousand, One Hundred and Twenty Naira only (#7, 831, 120.00) being the mesne profit from 15th June, 2022 to 31st December, 2022 assessed pro rata at monthly rate of #1, 305, 186.67k (One Million, Three Hundred and Five Thousand, One Hundred and Eighty -Six Naira, Sixty-Seven Kobo) per Month.

Under the recovery of premises law, it is trite that a landlord desiring to recover possession of the premises let to his tenant shall firstly, unless the tenancy has already ended, determine the tenancy by service on the defendant of a Notice to quit. On the determination of the tenancy the landlord shall serve the tenant with a statutory notice of his intention to apply to the court to recover possession.

Therefore, the landlord shall file his claim, the summons will be issued and served.

The object of a notice to quit is to terminate the tenancy so that possession of the premises may revert to the landlord.

Where by the agreement of the parties the tenancy is for a fixed form, a notice to quit is unnecessary and the landlord may proceed with the seven days' notice.

When the tenancy has come to an end by the agreement of the parties, service of any notice to quit is a surplusage and cannot operate as a waiver of the fact that the tenancy had come to an end by the effluxion of time. See *Otegbade V Adekoye* (1962)2 All NLR 52. Fixed terms of tenancy includes where it is agreed that the tenancy would be for a certain number of months or years or till a particular day or contingent on an event upon which it is to end.

Having said this, the claimant as per the claimant's statement of claim clause 6, 10, 12 have complied with the procedure as stated above, this also applies to clause, 8, 12 and 14 of the claimant's witness written statement on oath.

From the foregoing it can be said that the defendant has no defence to the claimant's claim. Hence, I shall grant the claims of the claimant, as the statement of claim was not challenged nor controverted by the defendant. It is trite that where evidence is unchallenged, uncontroverted and manifestly credible, a reasonable court or tribunal is at liberty to accept it and indeed act on it. See *Ikwuka V Ananchuna* (1996)1 NWLR (PT. 424)355.

In fulfillment of this requirement, the claimant's statement of claim and the claimant's witness statement on oath which has not been contested, challenged or controverted, the exhibit before the court in support of the claimant claim were not questioned, contested or challenged. There is nothing placed before the court to deprive the claimant of the grant of the order sought in this suit.

In the final analysis, it is the judgment of this court that the claimant has proved its case. I therefore grant reliefs 1, 2 & 3 while on relief 4, being the claim of #5,000,000.00 as general damages for holding over the demised premises illegally, I have this to say:

The claimant's claims damage, and it is trite law that the purpose of an award of damages is to compensate the claimant for damage, or loss suffered. And the guiding principle in the award of damages is restitution in integum, that is a party who has been damnified by the act which is in issue must be put in the position in which he would have been if he had not suffered the damage which is in issue. See *Kusfa V U.B.C LTD* (1994)4 NWLR (PT.336)1. In the instant case there is nothing placed before the court to award the amount claimed by the claimant. Hence I shall refuse to grant same.

On the cost of this suit, the law is that the claim should have been specifically proven before it can be awarded. It is not clear whether the sum claimed is legal fee paid to the court or out of pocket expenses.

In Divine Ideas LTD V Umoru (2007) ALL FWLR (PT.380) at 1509 paragraphs A-D, the court of Appeal Abuja Division held thus:

“Cost of Action or solicitors fee 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 of money 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 non-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 on suit (SEE Guinness (Nig.) Plc V Nwoke (2000)15 NWLR (Pt. 689)140 at para C Per Ibiyeye JCA.

In the light of the above, I hold that whatever, cost of prosecuting this action stands for, it is not grantable by this court as no such claim was proved before me. This court is not a father Christmas, and moreover this is just October, December is not near at all. That claim is dismissed.

In the final analysis, it is the judgment of this court that the claimant has proved its case, I therefore grant the following: I grant relief 1, 2 & 3. Relief 4 & 5 are refused.

This is the judgment of this court.

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Hon. Justice A. Y. Shafa

Appearance:

1. G. C. Nvanyanwu holding the brief of Joseph E. Chukwuemeka
2. Defendant not in court