

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**(APPEAL DIVISION)**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT ABUJA**  
**BEFORE THEIR LORDSHIPS:**

**On Wednesday 28<sup>th</sup> day of February, 2024**

**HON. JUSTICE Y. HALILU                    -                    PRESIDING**  
**HON. JUSTICE E. ENENCHE               -                    MEMBER**

**APPEAL**

**NO.:CVA/153/2022**

**SUIT NO.: CV/WZ2/220/2021**

**BETWEEN:**

**CHRISTIANAH OJEBODE                    .....** **APPELLANT**

**AND**

**CALISTUS OKWUDILI                    .....** **RESPONDENT**

## **JUDGMENT**

This is an Appeal by the Appellant (who was the Plaintiff before the Lower Court) against the judgment of His Worship, Hon. Mariam B. Said of the District Court of the Federal Capital Territory, Abuja, (herein referred to as Lower Court) delivered on 14<sup>th</sup> day of June, 2022.

Christianah Ojebode the Appellant on Appeal who was the Claimant at the Lower Court approached the Court vide a civil plaint which was eventually placed under default summons upon satisfaction by the Trial Magistrate.

The afore-said judgment of the lower court can be found at pages 167-213 of the Records of Appeal.

The crux of the Appellant's case as it can be gleaned from the particulars of claim and Reply and Defence to the Statement of Defence and Counter-claim and the totality of evidence (Oral and Documentary) before this Honourable Court is that the Appellant paid the sum of N250,000.00 (Two Hundred and Fifty Thousand Naira) to the Respondent to occupy the Defendant's one apartment as a yearly tenant. The tenancy was supposed to run from 1<sup>st</sup> August, 2021 to

31<sup>st</sup> July, 2022, but moved out within one month of the tenancy due to the conduct and action of the Respondent.

The Appellant as Plaintiff in the lower court by way of Plaint filed Suit No. **CV/57/2021**. As a result, the Appellant claimed against the Respondent before the lower court as follows:

1. A Declaration that incursion into the Plaintiff's privacy, disconnection of power supply and incessant entry into the Plaintiff's apartment at No.10, Road 207, A-Close, Efab Global Estate, Idu, by the Defendant during the period of the Plaintiff's tenancy without her consent, permission and authority is illegal, provocative, and unconstitutional.
2. An Order of this Honourable Court directing the Defendant to immediately refund the sum of N229,000.00 (Two Hundred and Twenty-Nine Thousand Naira Only), being the un-used and un-exhausted rent in respect of 31<sup>st</sup> August , 2021 - 31<sup>st</sup> July, 2021 to the Plaintiff.
3. An Order of this Honourable Court directing the Defendant to pay the sum of N150,000.00 (One Hundred and Fifty Thousand Naira only) being the difference to secure an apartment in Idu and the one being forced to secure in Apo

at the price of N450,000.00 (Four Hundred and Fifty Thousand Naira).

4. An Order of this Honourable Court directing the Defendant to pay the sum of N4,000,000.00 (Four Million Naira Only) as exemplary and general damages for his acts of trespass and incursion into the Plaintiff's privacy.
5. An Order of this Honourable Court directing the Defendant to pay the sum of N250,000.00 (Two Hundred and Fifty Thousand Naira) to the Plaintiff being the cost of this action and other incidental and miscellaneous expenses.
6. Ten (10) percent post-interest on judgment sum until same is liquidated.

**Part of the decision of the lower court complained against:**

- i. The part of the decision of the lower Court refusing to grant Declaratory Relief sought by the Appellant.
- ii. The part of the decision of the lower Court stating that the Appellant repudiate the contract and the award of N100,000.00 (One Hundred Thousand Naira) in favour of the Respondent.

- iii. The part of the decision of the lower Court refusing Relief 3 (iii) in the Plaint on the ground that it is not logical and justifiable.
- iv. The part of the decision of the lower Court stating that the Respondent did not trespass.
- v. The lower Court failed to make any pronouncement on the material issue submitted for the determination of the Court on the disconnection of the Appellant from power supply (AEDC and Inverter) by the Respondent.
- vi. The part of the decision of the lower Court awarding a paltry sum of N100,000.00 (One Hundred Thousand Naira only) in favour of the Appellant as the cost of action and other incidental and miscellaneous expenses; and
- vii. The part of the decision of the lower Court awarding the sum of N10, 000.00 (Ten thousand Naira only) against the Appellant being alleged cost of repainting the one room apartment in favour of the Respondent.

The grounds upon which this Appeal is brought are as follows:

## **GROUND 1**

The Lower Court erred in law when His Worship held that Magistrate Court lacks jurisdiction to grant declaration in a matter arising from landlord and tenant relationship and the error thereby occasioned a miscarriage of justice on the Appellant.

### **PARTICULARS OF ERROR**

- i. The subject matter submitted before the lower Court is strictly rooted in tenancy.
- ii. Recovery of premises law clothed the Lower Court with the jurisdiction to grant Reliefs arising from landlord and tenant relationship.
- iii. There is no constitutional provision that divests the jurisdiction of the Lower Court in a landlord and tenant relationship.
- iv. There is no issue submitted before the Lower Court bordering on declaration of title.
- v. The case of ***CHRISTIAN OUTREACH MINISTRIES INC VS. COBHAM (2006) 15 NWLR (PT 1002)*** which was wrongly relied upon by the Lower Court is not on all fours with the facts and circumstances of this Appeal.

vi. The decision of the Lower Court occasion of miscarriage of justice on the Appellant.

## **GROUND 2**

The Lower Court erred in law and on facts when His Worship held that the Appellant repudiated the contract and awarded the sum of N100, 000.00 (One Hundred Thousand Naira) only as damages in favour of the Respondent against the Appellant and thereby neglected the pleadings of the parties to the contrary.

## **PARTICULARS OF ERROR**

- i. The law is well established that a fact not challenged is deemed admitted in law.
- ii. Whereas, the Respondent admitted that the Appellant would enjoy free electricity and water during the occupation of the apartment.
- iii. Whereas, there was uncontroverted evidence on record that the Appellant complained to the Respondent about the lack of constant supply of power within two (2) days of the occupation of the apartment before the Respondent fix the issue.

- iv. It is also in evidence that the Respondent admitted disconnecting the Appellant from Abuja Electricity Distribution Company (AEDC) and Inverter from 14<sup>th</sup> August, 2021 till the Appellant moved out of the apartment.
- v. Whereas, part of the reasons the Appellant moved out of the apartment was lack of peaceful and quite enjoyment.
- vi. The Appellant cannot be held liable in repudiation of contract.
- vii. The Respondent did not submit or lead evidence on issue of repudiation before the Lower Court.
- viii. The judgment of the Lower Court is at variance with the pleadings of the parties.
- ix. The award of N100, 000.00 (One Hundred Thousand Naira) only damages awarded in favour of the Respondent on the ground of repudiation is unjustifiable.

### **GROUND 3**

The Lower Court erred in law and came to a perverse decision when His Worship held that Relief 3 (iii) in the Plaint is not logical and justifiable.

### **PARTICULARS OF ERROR**

- i. The law is well established that parties as well as the Courts are bound by the parties' pleadings.
- ii. It is in the pleadings and evidence that Appellant found a number of Apartments within Efab Global Estate, Mora but unable to secure any due to the failure of the Respondent to refund the Appellant.
- iii. It is also in evidence that the Appellant sought for an alternative accommodation before the apartment at Plot 600, Durumi 1, Area 1, Apo, Abuja was rented by the Appellant.
- iv. Exhibit P7 was tendered and admitted without a challenged by the Respondent.
- v. Respondent did not plead or lead evidence to challenge the difference in securing the apartment.
- vi. The decision of the Lower Court occasioned miscarriage of justice on the Appellant.

#### **GROUND 4**

Having rightly held that:

***"It is the day the Plaintiff assumed possession which means from the get go the bathroom though having***

***separate entrance has always been exclusively for the Plaintiff."***

The Lower Court erred in law and came to a perverse decision when His worship held as follows:

***"Now what I find is that the planks were taken to an unnatural place i.e the bathroom, the doors for which were ajar (Unlocked the owner of the said planks act of removing en for ere were justified and lawful."***

### **PARTICULARS OF ERROR**

- i. It is a trite law that a clear and exclusive possession of any form is sufficient to maintain an action for trespass against a wrong doer.
- ii. The Lower Court rightly held that the bathroom has always been an exclusive possession of the Appellant.
- iii. It is in evidence that the Respondent entered the Appellant's bathroom without Appellant's consent and took away her bed planks.
- iv. Whereas, the Respondent pleaded that there was an oral tenancy agreement between the parties that the Appellant

would keep to good use of the one room apartment and the facilities therein.

- v. The judgment of the Lower Court occasioned a miscarriage of justice against the Appellant.

## **GROUND 5**

The Lower Court erred in law and came to a perverse decision when His Worship failed to make pronouncement on material issue submitted for the determination of the Court on the disconnection of the Appellant from power supply (AEDC and Inverter) by the Respondent.

## **PARTICULARS OF ERROR**

- i. Whereas, the law is well stated that a landlord is not at liberty to orchestrate tenant's eviction by unconventional means.
- ii. It is in evidence that the Respondent disconnected the Appellant from AEDC & Inverter without an order of the Court.

- iii. The Respondent resorted to self-help to frustrate the Appellant to move out from the apartment.
- iv. The failure of the Lower Court to make a pronouncement on this issue of disconnection of the Appellant from electricity and inverter occasioned a miscarriage of justice on the Appellant.

## **GROUND 6**

The Lower Court erred in law and on facts when His Worship awarded a paltry sum of N100, 000.00 (One Hundred Thousand Naira only) in favour of the Appellant as the cost of action and other incidental and miscellaneous expenses.

## **PARTICULARS OF ERROR**

- i. There is a clear evidence on record that the Appellant was charged with the sum of N250, 000 (Two Hundred and Fifty Thousand Naira Only) for legal representation in instituting this action.
- ii. It is also in evidence that the Appellant has paid the sum of N150, 000.00 (One Hundred and Fifty Thousand Naira) only out of the said professional fee leaving a balance of N100, 000.00 (One Hundred Thousand Naira) only to be paid.

- iii. There is sufficient evidence on record that the Appellant engaged the services of Counsel to cause several letters to the Respondent for the refund which the Respondent did not honour.
- iv. The Lower Court failed to evaluate the evidence led by the Appellant in claiming cost of this action and other incidental and miscellaneous expenses.

## **GROUND 7**

The Lower Court erred in law and thereby occasioned a grave miscarriage of justice in granting the sum of N10, 000.00 (Ten Thousand Naira) as relief 6 of the Respondent's claim in the Counter-claim for the cost of repainting the one room apartment.

## **PARTICULARS OF ERROR**

- i. Relief 6 of the Respondent's claim in the counter-claim is a claim in special damages which requires to be specifically pleaded and proved.
- ii. The Lower Court awarded claim in special damages which was not specifically pleaded and proved.

- iii. Respondent failed to lead evidence or call the painter who cost the repainting of the one room apartment.
- iv. The Court placed undue weight on the ipse dixit of the Respondent on the cost of repainting the one room apartment.
- v. Whereas, it is a trite law that where a person consent to a risk, such a person cannot complain if the risk eventually comes.
- vi. There is also a clear evidence on record that the room had moulds before the Appellant moved into occupation of the room.
- vii. There is unchallenged evidence on record that the Respondent was the one that suggested the use of stickers and wallpapers to cover the moulds on the wall when the Appellant raised the issue of moulds.
- viii. The Appellant cannot be held liable for breach of repairing covenant.

## **GROUND 8**

The judgment of the lower court is against the weight of evidence.

**THE APPELLANT SOUGHT FOR THE FOLLOWING RELIEFS:**

- a. An Order allowing the Appeal and setting aside those parts of the Lower Court's Judgment itemized in this appeal.
- b. An Order entering judgment in favour of the Appellant in terms of the Plaint.
- c. Such further Order(s) as this Honourable Court may deem fit to make in the circumstances.

Upon compilation of records and successful entering of Appeal, the Appellant filed its brief of argument in line with procedure.

For unexplained reason, Respondent did not file any brief.

The Appellant's brief of argument was dated the 18<sup>th</sup> of October, 2022 and filed on the same date at the Appeal Registry.

In the said Appellant's brief, six (6) issues were formulated for determination to-wit;

- 1. Considering the clear provisions of District Court (Increase in Jurisdiction of District Court Judges)***

***Order, 2021 vis-à-vis the facts and circumstances of this case, whether the Lower Court was right to have refused jurisdiction to grant the declaration sought by the Appellant. (Distilled from Ground 1).***

- 2. Whether the Lower Court was right when it held that the Respondent was justified in trespassing into the Appellant's bathroom. (Distilled from Ground 4)***
- 3. Whether the right to fair hearing of the Appellant was not denied when the lower court failed to make pronouncement on the material issue submitted by the Appellant for the consideration of the lower court. (Distilled from Ground 5)***
- 4. Considering paragraphs 29, 30 and 31 of the particulars of claim vis-à-vis Exhibit "P7", whether the Lower Court was not patently wrong to have refused Relief 3 in the particulars of claim. (Distilled from Ground 3)***
- 5. Whether the Lower Court did not misconceive the Respondent's case on the Pleadings when it held that the Appellant repudiated the contract and, the misconception accounted for the lower Court's***

***conclusion to award the sum of N100, 000.00 (One Hundred Thousand Naira) against the Appellant. (Distilled from Ground 2).***

***6. Having regards to the principle of volenti non fit injuria vis-à-vis the evidence on record, whether the award of the sum of N10, 000.00 (Ten Thousand Naira Only) to Respondent as a cost of repainting the one room apartment was justified. (Distilled from Ground 7).***

**On issue 1**, learned counsel contends, that the Lower Court was in error to have declined jurisdiction to grant the declaration sought for by the Appellant and this Court is urged to so hold.

Learned counsel further contends, that the Supreme Court has remained unrelenting in emphasizing the importance of jurisdiction in adjudication, particularly to the effects that Courts can only adjudicate on issues or matters that are competently within their jurisdictional limits. ***UTI VS ONYIVWE (1971) SCNJ 25 at 49*** was cited.

Learned counsel submits, that owing to the fact that the subject matter of this suit is within the jurisdiction of the Lower Court, the Appellant, by relief 1 in her Particulars of Claim, crave the

indulgence of the Lower Court to merely declare the Respondent's acts of trespass, disconnection of power supply and incessant entry and incursion into the Appellant's privacy during the subsistence of the tenancy as constitutionally wrong. Against the foregoing, counsel submits, that the point has always been made by the Appellate Courts that once a Court is clothed with the requisite jurisdiction to adjudicate on a matter, it has unfettered powers to make both declaratory and executory orders in respect thereto. ***PRICE WATERHOUSE VS MOMOH (2020) 18 NWLR (PT. 1755) 1 at Page 50; and***

***ANGADI VS PDP (2018) 15 NWLR (PT.1641) 1*** were cited.

Learned counsel argued, that the Lower Court wrongfully relied on the case of ***C.O.M INC VS COBHAM (2005) LPELR-11406 (CA) or (2006) 15 NWLR (PT. 1002)*** in coming to its conclusion that it lacks jurisdiction to grant declaration. Learned counsel also argued, that the Lower Court is imbued with the jurisdiction to grant declaration especially when the subject matter of the suit is within the jurisdiction of the lower Court.

Learned counsel contends, that the case ***C.O.M INC VS COBHAM's (Supra)*** relied upon by the Lower Court is a good

authority on what it was decided upon but its application is not relevant to this case because of the following reasons, namely:

- a. The Appeal before the Court of Appeal in ***COBHAM (Supra)*** centered on whether the suit filed at the High Court during the pendency of another suit at the Magistrate Court on same subject matter amount to an abuse of court process.
- b. Whereas in ***COBHAM (Supra)***, the High Court ruled that the Appellant ought to have filed a counter-claim before the Chief Magistrate in the suit pending before it.
- c. Whereas, the Court of Appeal held that the Magistrate Court cannot give declaratory judgment given the nature and quantum of the claim sought in ***COBHAM (Supra)*** at the High Court which were above the jurisdiction of the Magistrate Court.

**On issue 2**, it is the contention of learned counsel, that the Lower Court was in error in failing to hold the Respondent liable in trespass and this Court is urged to so hold.

The Courts in a long line of authorities have held that a party who proves trespass is entitled to recover damages even where he has not sustained any actual loss. ***ANYANWU VS. UZOWUAKA***

***(2009)13 NWLR (Pt. 1159) 445 AT Page 474, Paragraphs E-F*** was cited.

Learned counsel submits, that it is instructive to point out that the lower Court copiously found that the Respondent trespassed into the Appellant's bathroom during the subsistence of the tenancy. It is also important to stress it out that the lower Court at page 194 of the Record of Appeal held that from the word go, the Appellant has always been in the exclusive possession of the bathroom. Apart from the foregoing, there is also undisputed evidence on record that the Respondent entered the Appellant's bathroom and took away bucket without her consent but same was returned by the Respondent after an altercation.

Learned counsel further submits, that from the foregoing and since the tort of trespass is actionable per se that is without proof of damages, this Court is urged to set aside the decision of the lower Court and resolve this issue in favour of the Appellant against the Respondent. In conclusion, but with utmost respect that general damages may be awarded to assuage such a loss, which flows naturally from the Defendant's act. It needs not be specifically pleaded. It arises from inference. It suffices if it is generally averred. They are presumed to be the direct and

probable consequence of that act complained of **FEDERAL MORTGAGE FINANCE LTD. VS. EFFIONG EKPO (2004) 2 NWLR (856)** was cited.

**On issue 3**, learned counsel submits, that the position of the law is well established to the effect that a party is entitled as of right to the consideration of all his case before the Court. It is also a trite law that a Court of law is under a duty to pronounce on all issues presented for resolution. The Supreme Court has settled this clear issue of law in a long line of cases, including that of **A.G. LEVENTIS NIG PLC v. AKPU (2007) LPELR-5 (SC)**.

In the instant case, and as it can be gleaned from the Appellant's particulars of claim, the Appellant submitted for the consideration of the lower Court the issue of disconnection of her power supply during the subsistence of the tenancy by the Respondent. Appellant also proffered evidence of the disconnection of the power supply and which were corroborated and admitted by the Respondent before the Lower Court. Attention of this honorable court is invited to paragraphs 16 and 17 of the Appellant's particulars of claim which can be found at page 3 of the Record of Appeal and the evidence of the Respondent under cross-

examination which can be found at Page 164 of the Record of Appeal.

Against the foregoing, learned counsel submits that the Respondent took laws into his hands by disconnecting the Appellant from power supply. The position of the law is well-established to the effect that no one should be a judge in his own case and in the instant case; the Respondent resorted to self - help which has been deprecated in a civilized society.

Learned counsel further submits, that the action and conduct of the Respondent from the word go had always been on how to frustrate the Appellant from leaving the apartment without recourse to law and he succeeded when he removed the Appellant from the power supply on the 14<sup>th</sup> August, 2021. ***HAMIDU VS SAHAR VENTURES LTD (2004) 7 NWLR (PT. 873) 618*** was cited.

Learned counsel also submits, that exemplary and aggravated damages have been held to punish and deter blame worthy conduct and thereby prevent the occurrence of the same act in the future. ***UDOH VS. OKITIPUPA OIL PALM PLC. (2005) 9 NWLR (PT. 929)*** was cited. Flowing from the foregoing, this

Honourable Court is urged to resolve this issue in favour of the Appellant against the Respondent.

**On issue four,** it is the contention of the Appellant that the Lower Court was patently wrong to have refused the Relief 3 sought by the Appellant in the particulars of claim when there was no challenge to the claim by the Respondent and this Court is urged to so hold.

Learned counsel further contend, that the Appellant, in demonstrating her entitlement copiously pleaded and proved in her evidence before the Lower Court to the effect that she found a number of better apartments within Efab Global, Mora at the rate of N300, 000.00 (Three Hundred Thousand Naira) but unable to secure any due to the failure of the Respondent to refund her as promised. The Appellant also gave evidence to the effect that she was forced to secure another apartment in the sum of N450, 000.00 (Four Hundred and Fifty Thousand Naira) as opposed to the sum of N300, 000.00 (Three Hundred Thousand Naira) and the difference of extra N150, 000.00 (One Hundred and Fifty Thousand Naira) paid to secure the apartment in Apo would have been avoided if the Respondent had refunded her as promised. Further to the foregoing, it is also in evidence that the Appellant

suffered underserved financial embarrassment, deprivation and mental agony.

Learned counsel further submits, that Respondent's Statement of Defence and Counter-Claim to the effect that the Respondent did not join issues with the Appellant nor challenge Appellant's evidence that the Appellant was forced to secure an apartment in Apo when there was no money to secure an apartment within Efab due to refusal of the Respondent to refund the unexpired rent. Against the foregoing, it is submitted that the position of the law is well crystallized to the effect that a fact not denied is deemed admitted and the Court can safely act on it. ***AMADI V. NWASU (1992) 5 NWLR (PT. 241) 273AT 284*** was cited.

Learned counsel argued, that the Respondent's attempt to challenge the Appellant on the Relief (iii) was in his final written address wherein the Respondent submitted before the Lower Court that the Appellant as an NYSC person is entitled to free accommodation provided in the state where she is serving. With greatest respect to the Respondent, this linen of submission was not borne out of pleadings or evidence by the Appellant. Counsel submits, that it is an attempt by the Respondent to give evidence through the back door having realized the insufficiency of his

evidence led by open demonstration at the trial or hearing of this case, has resorted to bringing in evidence via the backdoor through the address. It is trite that no matter how brilliant, intelligent and /or eloquent a final written address is, it can never take the place of evidence. ***PDP VS. INEC &ORS. (2012) LPELR-9225 (CA)*** was cited.

**On issue five**, learned counsel contends, that the Lower Court misconceived the case thrown up by the Respondent's pleadings before it and this misconception of the case thrown up occasioned a miscarriage of justice in the judgment of the lower Court on the Appellant.

Learned counsel submits, that pleadings are the pillars upon which a Party's case is founded and they form the parameters of a Party's case at the trial Court. Parties, as well as the Courts are bound by the Parties' Pleadings and neither the Court nor the Parties can go outside the Pleadings. The Supreme Court has settled this clear issue of law in a long line of cases, including that of ***ANYAFULU VS MEKA (2014) 2 SC. (Pt. 1) 149, 172 – 173*** was cited.

Learned counsel further submits, that against the backdrop of the foregoing, and based on the state of Pleadings of the Parties

before **the Lower Court, it is patently clear that repudiation of contract was not part of the issues submitted for the resolution and determination of the Lower Court. In fact, the Lower Court aptly captured the meat of the Respondent's case in its judgment when it observed at page 200 of the Record of Appeal as follows:**

***"The summary of the counter claim is predicated upon the following facts as follows:***

- 1. The walls of the premises was ruined by the plaintiff so he had to repaint same.***
- 2. The bed frames in the plaintiff's room were treated due to exposure in the bathroom.***
- 3. Professional fees for instituting this suit***
- 4. The inverter."***

It is the submission of learned counsel, that the Lower Court having rightly observed, resolved and determined the issues thrown up by the Pleadings of the parties before it, the Lower Court ought not to have veered into another issue not submitted for the determination of the Lower Court. Rather than confining to the case of the Respondent, the lower Court on a frolic of its

own raised the issue of repudiation of contract when it held in its judgment at Page 212 of the record of appeal as follows:

***"Having held in the substantive suit that the plaintiff repudiated the contract and the defendant/counter claimant accepted same, he is therefore entitled to damages I hereby grant N100,000.00 (One Hundred Thousand Naira)."***

Learned counsel also submits, that it has been well established that the lower Court was in a grave misconception of the dispute it was invited to resolve between the parties in this case. The lower Court misconceived the Respondent's case as one centers on repudiation of contract, whereas the Respondent was not challenging the yielding of possession by the Appellant.

**On issue 6,** learned counsel contends, that the award of N10,000.00 (Ten Thousand Naira Only) awarded to the Respondent as the cost of repainting the wall of the one room apartment is at variance with the evidence on record and same was not justified.

Learned counsel submits, that it is a trite law under our jurisprudence that where a person consent to a risk, such a person cannot complain if the risk eventually comes. This is well entrenched in the principle of *volenti non fit injuria*. In the instant

case, there is copious evidence on record to the effect that the one room apartment occupied by the Appellant already had moulds developed on its wall before the occupation of the Appellant. There is also on record that moulds on the wall was developed due to the leakage of the roof and which was brought to the attention of the Respondent. Furthermore, it is also on record that the Respondent advised the Appellant against repainting the walls when his attention was drawn to the moulds and the Respondent suggested use of stickers and wallpapers to cover the most conspicuous parts of the wall. This Honourable Court is referred to Paragraphs 3, 12 and 13 of the Appellant's additional evidence before the Lower Court which can be found at Pages 100-101 of the Record of Appeal and Paragraphs 6 and 7 of the PW2 evidence which can be found at Page 105 of the Record of Appeal.

Learned counsel submits further, that the aforesaid evidence on record were neither denied nor challenged by the Respondent. The position of the law on unchallenged or un-contradicted evidence is well-established. ***IKONO LG VS. DE BEACON FIN & SEC LIMITED (2002) 4 NWLR Pt. 756*** was cited. Which is to the effect that where evidence is not challenged or contradicted

or put in issue by the other party who had the opportunity to do so, it is open to the trial court to act on such evidence.

Despite of the foregoing, it was surprising when the lower Court held at Page 209 of the Record of Appeal as follows:

***"The fact remains that the respondent indeed put up stickers on the wall to which she is not denying same and it logical that stickers on the wall will damage the wall. This claim is hereby granted."***

It is further submitted that the conclusion of the Lower Court to the effect that the Respondent is entitled to the sum of N10,000.00 (Ten Hundred Thousand Naira) only amounted to allow the Respondent to benefits from his own election, wrong and/or default having regards to the unchallenged evidence on record which is to the effect that the Respondent was the one that asked the Appellant to use stickers to cover the conspicuous parts of the walls as opposed to the paints suggested by the Appellant. Against the foregoing, counsel cited the cases of ***F.B.N PLC VS. SONGONUCA (2007)3 NWLR (Pt. 1021) at 280, Paragraphs. B-D; and***

***ADEDEJI VS N.B.N. LTD (1989)1 NWLR (Pt.96) 2121*** to the effect that no one should be permitted to profit from his own wrong or default.

It is further the submission of learned counsel, that the award of N10, 000.00 (Ten Thousand Naira) only granted to the Respondent by the Lower Court is predicated on Paragraph 67 of the Respondent evidence and the said Paragraph 67 is hearsay. Hearsay evidence is of no and it has no place in our law of evidence. ***A.C.N. V. NYAKO (2015) 18 NWLR (Pt. 1491) 352 AT 385 PARAS C-F*** was cited.

In conclusion, learned counsel invites this Honourable Court to allow this Appeal on all the grounds stated hereunder and in furtherance of the arguments contained herein-above.

This Honourable Court is most respectfully urged to set aside the Judgment of the lower Court delivered on the 14<sup>th</sup> June, 2022 in **Suit NO: CV/WZ2/220/2021** by His Worship Mariam B. Said, of the District Court of the Federal Capital Territory, Abuja and most respectfully urged to grant all the reliefs contained in the Appellant's Notice of Appeal filed on the 15<sup>th</sup> July, 2022.

**COURT:-**

We have read through the grounds contained in the Notice of Appeal, on the one hand and the brief of argument and the issues therein formulated which all dovetail to the grounds of appeal.

From the processes filed as clearly shown at pages 1 – 112 of the Records, the issue before the Trial Court was anchored on Tenant/Landlord relationship. The Claims/Counter Claims and Defence have been duly reproduced in the preceding part of this Judgment and would make no meaningful gain re-producing it again.

It is similarly important to note that Respondent, who was the Defendant at the Lower Court refused and or ignored to join issues with the Appellant/Plaintiff on this Appeal.

Needless to say that this Appeal shall then considered primarily on the Processes filed by the Appellant/Plaintiff.

We have read through the issues formulated by the Appellant for determination. The issues as reproduced are six (6) in numbers.

To my mind, **the issue whether the Judgment of the Lower Court meets the requirement of fairness and justice, is formulated for determination of this Appeal.**

We will begin by addressing the misunderstanding contained in the Judgment of the Lower Court which is contained at Page 181 of the Records of Appeal where the Trial Magistrate refused to deal with the issue of Declaratory Relief simply on grounds of jurisdiction... What then is a Declaratory Relief and when shall same be granted!

It is necessary to also state that Declaratory Relief is not only related to title to land.

Declaratory action is an invitation to the Court to make a pronouncement as to the state of the law with regards to a particular circumstance or situation. Indeed, a Declaratory Order merely declares the right of the parties.

See ***S.P.D.C (NIG) LTD. VS. AMADI & ORS (2011) LPELR – 3204 (SC).***

From the pleadings before the Trial Magistrate which can be found at pages 1 – 112 of the Records of Appeal, the issue was purely on Tenant/Landlord which relationship went sour on account of the conduct of both parties, whereof the suit was instituted.

There was therefore nothing wrong for the Trial Magistrate making pronouncement as to whether or not from the entirety of the evidence before the Court, Plaintiff was entitled to the said declaration as a Tenant. The Trial Magistrate was wrong in law in this situation.

We now proceed to look at the law on trespass.

A trespass action is based on exclusive possession. It is also the law that a person can be in possession through a third party such as Agent.

A tenant in law has been defined to include all persons who occupy premises lawfully whether such person pays rent regularly or not. The qualification for becoming a tenant is lawful occupation, whether the initial entry is lawful.

On above, see the cases of ***NIGERIA AIRWAYS LTD. (in liquidation) & ORS VS. MAHDI (2013) LPELR 20742 (CA); AP VS. ONUDUMI (1991) 8 NWLR (Pt. 210) Page 419.***

From the pleadings before the Trial Magistrate, there is no dispute as to the fact that the relationship was that of Tenant/Landlord.

It is necessary to note that there was no written document stating the terms of the tenancy. The tenancy therefore was a statutory one in law.

It is however very established that the Appellant who paid N250,000.00 (Two Hundred and Fifty Thousand Naira) for rent of the Respondent's one room apartment, was let into possession of same.

It is worthy of note that the right to privacy is constitutional and guaranteed under Section 37 of Chapter IV of the 1999 Constitution of Federal Republic of Nigeria (FRN) as amended.

The term privacy is very wide as it does not define the specific aspects of the privacy of citizen it protects. A citizen is ordinarily a human being... his body, his life, his person, character, possession etc.

Supreme Court defined privacy to encompass privacy of all his constituents as a human being.

See ***MEDICAL AND DENTAL PRACTITIONERS DISCIPLINARY TRIBUNAL VS. OKONKWO (2001)5 NSCQR 650 at 684 – 684.***

The Court held that the right to privacy implies a right to protect one through, conscience or religious belief and practice from coercive and unjustified intrusion and one's body from unwarranted invasion.

Eventhough Respondent did say that there was no agreement on inhibited access to the apartment of the Appellant, the fact that Appellant has been laid into possession as Tenant, and a lawful one at that, unless and until she grants consent to the Respondent, he has no such right to access the apartment of the Appellant.

Provision of convenience i.e toilet and bathroom is a necessity under the Medical Health Act. The conduct of the Respondent towards the Appellant on the issue of bathroom is most uncivilized, overbearing and degrading. It is clear trespass.

It is on record that Respondent disconnected the Appellant from light.

Respondent who has made the life of the Appellant "hell" on earth promised to pay back the unexpired rent should she pack-out of the Apartment.

On the claim that Respondent/Defendant shall be made to pay the extra N150,000.00 (One Hundred and Fifty Thousand Naira) which Appellant made up to get an Apartment for N400,000.00 (Four Hundred Thousand Naira) instead of N250,000.00 (Two Hundred and Fifty Thousand Naira).

We make bold to say that it was the choice of the Appellant/Plaintiff to get affordable accommodation and not that of the Respondent/ Defendant. We agree with the Trial Magistrate who refused to grant the relief.

On the counter claim of the Respondent/Defendant/Counter Claimant, we shall state the law as it is on the general purpose of pleadings.

The essence of pleadings is to settle the issues to be tried and to prevent one party taking the other party by surprise.

It is therefore clear that for the Court to give any credence to pleadings, evidence shall so be led in prove of same or else same shall be deemed abandoned. Similarly, evidence led in prove of what has not been pleaded shall go to no issue.

See ***COMPTROLLER GENERAL OF CUSTOMS & ORS VS. GUSAU – (2017) LPELR – 42081 (SC);***

***OBULADIKE VS. NGANWUCHU (2013) LPELR – 21265 (CA).***

It is settled law that a Court cannot grant relief nor sought by a party in view of the fact that the Court is not a Father Christmas. See ***SAMUEL OGBONNA & ORS VS. GODSPOWER ORJI OGBONNA & ORS (2021) LPELR – 55902 (CA);***

***OKEKE VS. OKEKE (2017) LPELR – 42582 (CA).***

There is clearly nothing before the Trial Magistrate founded on repudiation of contract, and therefore the Lower Court was in grave error when it awarded the sum of N100,000.00 (One Hundred Thousand Naira) in favour of the Respondent or that ground... same is hereby set-aside.

On the award of N10,000.00 (Ten Thousand Naira) to the Respondent as cost of repainting the wall of the one room apartment, we find that at variance with the evidence of PW2 before the Court which is at page 105 of the Records of Appeal.

Respondent cannot be allowed to benefit from his wrong. The picture of the said apartment was taken before Appellant occupied same and no such adverse evidence was led to show destruction or otherwise of the said apartment.

The said N10,000.00 (Ten Thousand Naira) awarded is hereby set-aside. Respondent who clearly orchestrated the exit of Appellant from the said Apartment cannot benefit from his wrong.

On the whole, the Judgment of Lower Court on the Counter Claim of the Respondent/Defendant/Counter-Claimant is hereby set-aside.

On the other hand, having found the conduct of the Respondent/Defendant for the incessant entry into the Apartment of the Appellant as illegal and unconstitutional, which is a wrong in the eyes of the law (*ibi jus ibi remedium*) it then becomes necessary to award damages against the Respondent.

Exemplary damages is usually awarded to compensate a Plaintiff for harm done to him or punish a Defendant for his conduct, whereas general damages is meant to also compensate him regard being taken of the general circumstances.

See ***EZEAGU & ORS VS. NWUNU (2016) LPELR – 4016 (CA);***

***UKOM VS. TRANSCORP METROPOLITAN HOTEL & CONFERENCE & ANOR (2021) LPELR 54149 (CA).***

The sum of **N500,000.00 (Five Hundred Thousand Naira)** is hereby awarded as general and exemplary damages.

This Appeal on whole succeeds in part.

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***Hon. Justice Y. Halilu  
Enenche  
(Presiding Judge)  
28<sup>th</sup> February, 2024***

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***Hon. Justice E.  
(Hon. Judge)  
28<sup>th</sup> February, 2024***