

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA GWAGWALADA DIVISION
HOLDEN AT COURT NO. 13 GWAGWALADA
BEFORE HIS LORDSHIP: HON. JUSTICE A. S. ADEPOJU
THIS 19TH DAY OF FEBRUARY, 2024

SUIT NO: FCT/HC/CV/2447/2019

BETWEEN:

MR. SOLOMON OLUGBEMIGA AJALA ----- CLAIMANT

AND

ALH. MUKTHAR BELLO ----- DEFENDANT

L. N. CHIADIKOBI for the Claimant.

Defendant not in Court.

JUDGEMENT

In the writ of summons dated 9th July, 2019 the plaintiff claims against the defendant as follows:

1. An order of this honourable court to the defendant to immediately vacate the three (3) bedroom flat known as flat 6 which the defendant occupies in the property of the plaintiff in plot 1171 Adebayo Adedeji Crescent, Utako District Federal Capital Territory, Abuja within the jurisdiction of this honourable court.
2. An order of this honourable court to the defendant to pay the plaintiff the outstanding and accumulated arrears of rent amounting to the sum of **N5,500,000.00 (Five Million Five Hundred Thousand Naira)** only which accumulated from 2016 to 31 day of January, 2019.

3. An order of this honourable court to the defendant to pay to the plaintiff mesne profit at the rate of **N208,334.00 (Two Hundred and Eight Thousand Three hundred and Thirty Four Naira)** only per month from the 1 day of February 2019 until vacant possession is delivered to the plaintiff.
4. An order of this honourable court to the defendant to pay the plaintiff the sum of **N250,000.00 (Two Hundred and Fifty Thousand)** for hiring the services of the law firm of kelechukwu Okoroafor and Associates to prosecute this case.
5. An order of this honourable court to the defendant to pay to the plaintiff **N80,000.00 (Eighty Thousand Naira)** cost of action.

At the commencement of this suit counsel for the defendant informed the court of defendant's intention to settle amicably with the plaintiff, after two adjournments it became obvious that settlement has failed and the plaintiff was allowed to open his case.

On 31/3/2021 PW1, the plaintiff and the sole witness adopted his witness statement on oath and testified that he is the owner of the property in which the defendant occupies a flat. That sometime in 2016 he entered into a tenancy agreement with the defendant at a rent of **N2,000,000.00 (Two Million Naira)** and service charge of **N500,000.00 (Five Hundred Thousand Naira)** and **N50,000 (Fifty Thousand Naira)** refundable caution fee making a total of **N2,550,000.00 (Two Million Five Hundred and Fifty Thousand Naira)**. That the defendant paid **N2,050,000 (Two Million and Fifty**

Thousand Naira) and promised to pay the balance of **N500,000 (Five Hundred Thousand Naira)** before the expiration of the tenure which is from 1st of February 2016 to 31 of January 2017. That the defendant refused to neither pay nor renew his tenancy despite repeated demands made by the plaintiff. That he has issued the necessary statutory notices. That the defendant is owing a total of **N5,500,000 (Five Million Five Hundred Thousand Naira)** only as outstanding rent **N500,000 (Five Hundred Thousand)** for 2016-2017, **N2,500,000 (Two Million Five Hundred Thousand)** for 2017-2018 and **N2,500,000 (Two Million Five Hundred Thousand)** for 2018-2019. That he also owes three months for 2019-2020. That since effort to recover the money proved abortive and the defendant refused to yield possession he engaged kelechukwu Okoroafor and Associates of counsel to prosecute the case and paid the sum of **N250,000.00 (Two Hundred and Fifty Thousand Naira)**. The following documents was admitted through the witness, the tenancy agreement between the plaintiff and the defendant as Exhibit A1, the seven days notice to quit and the seven days notice of owner's intention to recover possession as Exhibit A2 and A3 respectively. The defendant was asked to cross examine the witness but he said he has no question for cross examination. The witness was discharged and the plaintiff closed his case.

The matter was adjourned to 25/10/2021 for defence parties were absent and further adjourned to 27/1/2022, the defendant was represented by counsel who informed the court that he is not ready for defence. The defendant did not file statement of defence or any process in this suit. The

defendant was foreclosed pursuant to an application by the plaintiff and the matter was adjourned for judgment.

The issue for determination in this suit is whether the claimant is entitled to the reliefs sought.

The law is trite that parties are bound by the terms of agreement they freely enter into, it is a general rule that where parties to an agreement have set out terms thereof in a written document extrinsic evidence is not admissible to add to, vary, subtract from or contradict the terms of the written instrument, see **ARE VS OWOEYE (2014) LPELR 41096 CA, UBN LTD VS SAX (NIG) LTD (1994) 8 NWLR (PT 361) 150** in the case of **SAMUEL ISHENO VS JULIUS BERGER NIG PLC (2008) 6 NWLR PG588 P.609 PARAS G-H** the court held that parties to an agreement or contract are bound by the terms and condition of the contract they signed and cannot operate outside its terms and condition. Exhibit A1 is the tenancy agreement between the parties. The agreement states thus:

“In consideration of the rent here reserved and the covenants herein contained, the landlord undertake to demise unto the tenant the aforementioned property to hold same unto the tenant for a term of one year certain which shall commence from the 1 day of February, 2016 to 31 day of January 2017... ..”

The law is that a lease or tenancy for a fixed term automatically determines when the fixed term expires. Quit notice is usually obviated in the case of a

fixed tenancy since the term of expiration is normally known unlike periodic tenancies that continues automatically from period to period until it is determined by quit notice see **NWEKE VS IBE (1974) 4 ECLSR PAGE 54**. All the landlord is required to do is to recover possession in a fixed tenancy as in the instant case to serve notice of owners' intention to recover possession as was held in the case of **JOSEF V ADOLE (2010) LPELR 4367 CA**. Since the tenancy is for a year certain and was not renewed Exhibit A2 which is seven days notice to quit and A3 which is the notice of owner's intention to recover possession are sufficient statutory notices to determine the tenancy.

Furthermore, where the evidence of a witness has not been challenged, contradicted or shaken under cross-examination and the evidence is not inadmissible in law and it is in line with the pleadings the court has a duty to accept it as the correct version of what it says and act on it accordingly. See **AMERICAN CYNAMIDE CO LTD VS VITALITY PHARM. LTD (1991) 2 SCNJ, 42, NZERIBE VS DAVE ENGR (1994) 9 SCNJ 161 @172**. Evidence not controverted is deemed admitted in law as was held in the case of **OZIGBU ENGINEERING COMPANY LTD. V. PHILIP IWUAMADI (2009) 16 NWLR (PT. 1166) 44 AT 63 PARAS D-F**. Only a minimal proof is required where only one party calls or adduces evidence since the burden is to prove on a balance of probabilities. It was held in **OFFODILE VS OFFODILE (2019) 16 NWLR (pt 1698) 189 SC** that a finding of fact that is neither challenged is undisputed and taken as admitted and acceptable to parties. The entirety of the

Claimants' evidence before this Honourable Court was not controverted in anyway by the Defendant.

The claimant informed the court on 31/3/2021 that the defendant has moved out of the apartment therefore relief 1 sought by the claimant which is for an Order directing the defendant to vacate the premises has been overtaken by event, reliefs 2, 3, 4 and 5 succeeds and is accordingly granted as per the writ of summons.

Sign

**Hon Judge
19/2/2024**