IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE. H. MU'AZU
SUIT NO: FCT/HC/CV/52/2022
DELIVERED ON THE 01/12/2025

BETWEEN:

MRS. YELWA ABUBAKAR……CLAIMANT

AND

URBAN SHELTER LTD……DEFENDANT

JUDGMENT

The Claimant commenced this suit against the Defendant vide a writ of summons dated 20th October, 2022 and filed on the same date.

The Defendant was duly served with the processes of this court to which a Memorandum of Conditional Appearance dated the 26th day of September, 2023 was filed on behalf of the Defendant. The Claimant in her statement of claim seeks for the following reliefs:

(a) ***A Declaration*** *that the Act of the Defendant in locking up the Claimant's shop No.* ***300/291*** *El - Rufai Plaza, Block* ***B2*** *at Garki International Market from January 2020 till date for failure to pay rent is unlawful, illegal and reprehensible*

(b) ***A Declaration*** *that the Defendant is not entitled to receive rent from the Claimant for the full period commencing from 2020 that the shop has remained locked and keyed by the Defendant.*

(c) ***An order*** *directing the Defendant to open the Claimant's shop No.* ***300/291*** *El - Rufai Plaza Block* ***N2*** *at Garki International Market.*

(d) ***An order*** *for payment of* ***₦100,000,000.00*** *(One Hundred Million Naira) only to the Claimant against the Defendant as aggravated/exemplary damages for locking up the shop and refusal to open same inspite of several appeals.*

(e) ***An order*** *directing the Defendant to pay general damages in the sum of* ***₦10,000,000.00*** *(Ten Million Naira) only to the Claimant for loss of income suffered from January 2020 till date.*

(f) ***10%*** *interest on the judgment sum from the date of judgment to the date of final liquidation of the judgment sum.*

(g) ***An Order*** *to pay the cost of litigation.*

The Claimant also filed along with the writ of summons statement of facts, witness statement on oath, additional witness statement on oath and list of documents to be relied upon in the cause of the trial. The Defendant filed a statement of defence dated the 26th day of September, 2023 and it was filed on the same date. The Defendants statement of defence is also accompanied with witness statement on oath and list of documents sought to be relied upon in defence of this suit.

Briefly stated, the facts of the case of the Claimant is that on the 23rd August, 2013, she rented shop No. **300/291**, El - Rufai Plaza, Block **B2,** Garki International Market, Abuja from the Defendant. Upon the payment of the sum of **₦396,000** (Three Hundred and Ninety-

Six Thousand Naira) only for one (1) year commencing from 26th August 2013 to 25th August 2014, she was issued receipt No. **0843** dated the 23/08/2013 as evidence of rent payment. She remained in possession of the said shop and was paying her rent regularly up to 2019 and has receipts of payment from 2013 to July 2019 as evidence.

Following the health challenges and other domestic problems encountered by the Claimant, she was unable to pay her rent for the period of August 2019 to August, 2020and the Claimant appealed to the agent of the Defendant for time to enable her sought out her challenges and pay her rent. By January 2020, barely five (5) months after the expiration of her rent, the Defendant without any prior notice to the Claimant forcefully locked up the shop of the Claimant without allowing her to take out any of her articles of trade and some personal effects. The Claimant felt sad, humiliated and guilty of non- payment of her rent, she resorted to begging and pleading with the Defendant to re-open the shop despite the fact that she knew that the action of Defendant is unlawful.

After about one (1) year of pleading with the Defendant and losing customers/incomes the Claimant decided to write officially to the Managing Director of the Defendant to Appeal for the reopening of the shop and inspite of the fact that the letter was duly received, the Defendant refused to reply the letter or reopen the shop. The facts of this case further revealed that the Claimant, through her solicitors Jimmy & Jimmy Associates wrote on the 8th February, 2021 to the Defendant to reopen the shop and pay compensation for its unlawful act. The Defendant through its solicitors Val Obiajulu & Co. replied on the 15th ofFebruary, 2021 and stated that the tenancy agreement

executed between the Claimant and the Defendant empowers the Defendant to take laws into its hands by locking out any tenant who fails to pay his or her rent. The content of the claim also shows that the Claimant has between January 2020 to date been out of the market and has suffered terribly with her four children some of whom are in different schools. The Claimant who personally testified before this court also tendered Exhibits **P1, P2, P3, P4, P5, P6, P7, P8, P9, P10, P11** and **P12** respectively. It will equally be in the interest of Justice to identify Exhibits **P1 t**o **P6** as various receipts issued to the Claimant by the Defendant for payment of her rent from the 26th August, 2013 to 25th August, 2019 respectively while Exhibit **P7** is the Claimant's letter to managing Director of the Defendant dated the 28th January, 2021. Similarly, Exhibit **P8** is the Claimant solicitors letter to the Defendant dated the 8th February, 2021 and Exhibit **P9**, the Defendant's Reply to the Claimant's letter dated the 15th February, 2021. The Claimant closed her case.

The Defendant on the other hand in their statement of defence laboriously denied almost all the allegations in the statement of claim and in fact, filed a counter claim against the Claimant. The Defendant therefore called one witness in support of their defence and the counter claim through whom some exhibits were tendered and marked as Exhibits **Dw1** and **Dw2** respectively. The Defendant had earlier on tendered Exhibit **PD1** through the **PW1**, the Claimant, under cross examination.

In all, both parties called one witness each who were equally cross examined accordingly after which the respective counsel for the parties filled their Final Written Addresses. The Final Written

Addresses were adopted by the respective counsel before this court on the 29/09/2025.

Meanwhile, the Defendant denied the claim of the Claimant and infact counter claimed against the Claimant seeking for the following reliefs:

A. ***An Order*** *of possession of the premises known as No.* ***300/291*** *El - Rufai Plaza, Block* ***B2****, Garki International Market, Abuja in favour of the Defendants/counter Claimant.*
B. ***An Order*** *of this Honourable court directing the Claimant to pay the Defendant the rent of two years owed by the Claimant from the year 26th August, 2019 to 25th August 2021.*
C. *Mesne Profit from the 25th August, 2021 until the Claimant yields up vacant possession of the premises known as No.* ***300/291****, El - Rufai Plaza, Block B2, Garki International Market, Abuja.*
D. ***An Order*** *of* ***₦2,000,000.00*** *(Two Million Naira) as cost of this suit.*

In response to the Defendant's counter claim, the Claimant filed a reply to the Defendant's statement of defence and a defence to the counter claim dated the 18th day of October, 2023 and filed on the same date in which the Claimant denied each and every allegation of fact contained in the counter claim.

The learned counsel for the Claimant S. M. Jimmy Esq in a bid to argue his position before this Honourable court distilled two issues for determination by this Honourable court to wit:

1. **Whether the Claimant has proved her case against the Defendant to be entitled to the reliefs sought.**

2. **Whether the Defendant/counter Claimant is entitled to the reliefs sought.**

The learned counsel for the Claimant commenced his argument by submitting that in civil suits the burden of proof lies on the Claimant. He referred to section 133 of the Evidence Act and the case of **CBN V. ARIBO (2018)4 NWLR (Pt. 1608) pg 130 at pg 166 paras B - D**. He also referred to the case of **OMISORE V. AREGBESOLA (2015) 15 NWLR (PT. 1482) PG 205 AT PG 272 - 273 PARAS G - D** where the Apex Court held as follows:

> ***"The old Latin maxim 'incumbitprobatio qui dicit non quinegot' developed from the old Roman jurisprudence and it means the burden of proving a fact rest on the party who asserts the affirmative of the issue and not upon the party who denies it, for a negative is usually incapable of proof".***

The learned counsel urged this Honourable court to consider the evidence of the Claimant as having rented the shop in issue from the Defendant in August 2013 and remained therein till January, 2020 when she was locked out of the shop by the Defendant's agents. The exhibits tendered by her in terms of Exhibits **P1,P2,P3,P4,P5** and **P6** as evidence of the payment of her rent were not controverted by the Defendants. According to the learned counsel, the evidence of the Claimant further shows that it was her failure to pay rent for only five months (not 1 or 2yrs) that the Defendant took laws into its hands and threw out the Claimant and her customers from her shop in broad daylight without allowing her to take out anything from the shop. He submitted that Exhibits **P7,P8,P9,P10**, and **P11** are evidence of the Claimant's pleadings which makes her reliefs

credible, cogent and convincing enough to warrant the grant of all the reliefs by this court.

The learned counsel also drew the attention of this court to paragraphs 2 & 3 of a letter, Exhibit **P8** from the learned counsel for the Claimant Jimmy & Jimmy Associates which partly reads:

> ***"Landlord and tenant relationship is comprehensively regulated by law enacted by the Federal Republic of Nigeria and duly gazetted. We make bold to state that the law does not make room for self - help and oppression of tenant as exhibited by your company"***.

He further referred to Exhibit **P9** which is a reply to Exhibit **P8** and tendered by the Defendant as Exhibit **D2** dated the 15th January, 2021 written by the Defendant's solicitor Val - Obiajulu & Co which equally reads partly as follows:

> ***"Accordingly, the locking up of your clients shop after several notices of reminder and demand for payment of rent following the determination of the tenancy by effluxion of time, was done in line with the condition/agreement guiding the hitherto landlord/tenant relationship between your client and our client, in order for your client to approach our client and make necessary arrangements for the removal of her belongings from the shop, to enable our client takeover possession of the shop and rent it out to prospective tenants"***.

The learned counsel also drew the attention of this Honourable court to the conflicting evidence of the Defendant that it was the Claimant who locked up the shop only for the Defendant to add a padlock to that of the Claimant to prevent the Claimant or any other person

from taking away the goods and wares in the shop without notice to the Defendant and payment of outstanding rent. In effect the Defendants did not deny, locking up the shop of the Claimant. He also referred the court to Exhibit **P12**, statement of defence dated 20th December, 2021, of a suit which was struck out before the Claimant filed the present suit. According to the learned counsel for the Claimant the inconsistencies in the pleadings and oral evidence of the Defendant are more noticeable or pronounced when paragraphs 8 and 13 of the pleadings are placed side by side with the oral evidence of the Defendant. In effect, he submitted that the Defendant is dilly-dallying as to whether or not the Claimant locked her shop or it was the consultant of the Defendant that might have done so over and above his brief as he was not authorized by the Defendant to lock up the shop. The learned counsel further wondered aloud as to whether or not it was the Claimant that locked her shop or that the Defendant locked the shop on the basis of Exhibit D1, the Tenancy Request Form or that the consultant locked up the shop without authorization from the Defendant.

He submitted that it is trite law that where there is material contradiction in the evidence of a witness, the court has no option than to discountenance it. He referred to the cases of **EMEKA V. OKOROAFOR (2017) 11 NWLR (PT. 1577) PG 410 AT PG 514 PARAS B - C** and **FATUBI V. OLANLOYE (2004) 40 WRN 148** on the same principle that where the evidence of a witness is inconsistent or contradictory, it ought to be discountenanced by the court.

It is also the submission of the learned counsel for the Claimant that from Exhibit P8 tendered by the Claimant and Exhibit D1 of the

Defendant it could be said that the Claimant was locked out by the Defendant from her shop for failure to pay rent. He referred to the case of **UKEJE V. UKEJE (2012) 11 NWLR (PT. 1418) PG 384 AT PGS 403 - 404 PARAS H - A** where the Apex court stated as follows:

> ***"The position of the law is that, once documentary evidence supports oral evidence such oral evidence becomes more credible. The reasoning is premised on the fact and law that documentary evidence serves as a hanger from which to assess oral testimony".***

On this Relief (a) the learned counsel submitted that the defence of the Defendant is absurd and lacks merit to imagine that by the age and profession of the Claimant as a lawyer she could have locked out herself and yet continue to plead and engage counsel to plead on her behalf when she could have employed the services of a carpenter to break same.

The learned counsel further submitted that on the basis of the foregoing arguments the Defendant is not entitled to receive rent from the Claimant from January 2020 when the shop will be reopened for the Claimant. This, according to him is because equity does not allow a party to benefit from its own wrong. He referred to the case of **NWOSU V. APP (2020) 16 NWLR (PT. 1749) PG 28 AT PG 60** and the case of **ONYENEYIN V. AKINKUGBE (2010) 4 NWLR (PT. 1184) PG 265.**

It is also the submission of the learned counsel for the Claimant that she has laid evidence of prove that the Defendant forcefully locked her out of her shop and that she went further to plead and tender

documentary evidence to show that she repeatedly appealed to the Defendant to reopen the shop but it refused. He submitted further that the action of the Defendant deserves an aggravated exemplary damages to be awarded in favour of the Claimant. The learned counsel therefore referred to the cases of **ZENITH BANK PLC V. BUSINESS GOLD LTD (2017) 17 NWLR (PT. 1595) PG 489 AT PG 510** where it was held thus:

> ***"Exemplary, punitive, vindictive or aggravated damages are awarded wherever the Defendant's conduct is sufficiently outrageous to merit punishment"***.

The learned counsel also referred to the case of **OKAFOR V. LAGOS STATE GOV'T (2017) 4 NWLR (PT. 1556) PG 404 AT PG 437** on the same principle stated in the aforementioned case of **ZENITH BANK PLC V. BUSINESS GOLD LTD** (Supra).

The position of the Claimant is further expressed in a reaction to the response by the Defendant to her plea to be allowed to pick/remove specified items from the shop said to have been locked up by the Defendant. The position of the Claimant with reference to the content of Exhibit 11 which is response to the letter by the Claimant in Exhibit 11 wherein the Defendant states inter alia that:

> ***"In the circumstance sir, it does appear that your request and passionate appeal can only be granted by way of an out of court settlement.....In the event that you are open to the forgoing, we recognize that time is of essence in view of the invitation card attached to your letter"***.

It is the submission of the learned counsel to the Claimant that the above stated part of the Defendants reaction to the appeal by the

Claimant clearly confirm the fact that the Claimant shop was lock out by the Defendant and not by the Claimant.

It is also the submission of the learned counsel for the Claimant that the stubborn refusal of the Defendant to re-open the Claimant's shop inspite of several appeals since 2020 till date is worthy of attracting general damages. According to him, it is the position of the law that where there is a wrong done to a party as in the instant case, the party is to be compensated by way of damages. He referred to the case of **BRITISH AIRWAYS V. ATOYEBI (2014) 13 NWLR (PT. 1424) PG 253 AT PG 286** where the Supreme court made it clear that:

> ***"The primary object of an award of damages is to compensate the plaintiff for the harm done to him or a possible secondary object is to punish the Defendant for his conduct in inflicting that harm".***

The learned counsel urged this Honourable court to grant a 10% interest on judgment sum as provided in order 39 rule 4 of the Old High Court of FCT Civil Procedure Rules 2018 which is in Pari-Materia with order 42 Rule 3 of the new High Court of FCT Civil Procedure Rules, 2025.

Similarly, the learned counsel urged this Honourable court to grant the relief requesting for an award of cost of litigation in favour of the Claimant. He referred to the case of **UBQNI UKOMQ V. SEVEN - UP BOTTLING CO. PLC (2023) 3 NWLR (PT. 1867) PG 117 AT PGS 184 - 185** where rue Supreme court held that:

> ***"A successful litigant in a legal battle is ordinarily entitled as of right to the award of costs of an action unless he***

misconducts himself in such a manner that deprives him of such an award, costfollows event".

He equally referred to an earlier decided case of **YAKUBU V. MINISTRY OF HOUSING AND ENVIRONMENT, BAUCHI STATE (2021) 12 NWLR (PT. 1791) PG 465 AT PG 485 PARAS B - E** where it was held that:

"Cost of an action and cost of filling the action are one and samething. The general rule is that costs follows event and a successful party is entitled to costs".

He further urged this Honourable court to grant all the reliefs argued in issue I distilled for determination by this Honourable court.

On the second issue formulated for determination by this Honourable court the learned counsel for the Claimant referred this Honourable court to the averment of the Defendant in its statement of claim as not being supported by any evidence let alone a credible and convincing evidence. He also referred to Exhibit D1 and D2 and the testimony of the DW1, Aliyu S. Aliyu as only indicating that it was the Claimant who locked up her shop and not the Defendant. He further referred to the witness statement on oath of the DW1 as being contradictory with his oral evidence before the court particularly when he testified to the fact that he does not know whether it is the Claimant who locked up her shop or the Defendant.

The learned counsel submitted that the position of the law is that in the circumstances the pleadings of the Defendant is not supported by any evidence and ought to be discountenanced. He again referred to the cases of **N.E.P.A V. AUWAL (2015) 5 NWLR (PT. 1241) PG 574 AT PG 595 PARA D - E, ORLU V. ONYEKA (2018) 3**

NWLR (PT. 1607) PH 467 AT PG 486 PARA H - A AND APENA V. ALLEU (2014) 14 NWLR (PT. 1426) PG 111 AT PG 127 PARA H - A respectively.

The learned counsel finally submitted that even if the Counter Claimant were to plead facts and lead evidence to show compliance with the provision of Recovery of Premises Act, it would still not be entitled to an order of possession of the premises known as No. 300/291, El - Rufai Plaza, Block B2, Garki International Market Abuja sought in this court. This, according to the learned counsel to the Claimant is because the Defendant forcefully evicted the Claimant from lawful possession of her shop and is seeking this Honourable court to legitimise it's illegal act. He therefore referred to the case of **NWOSU V. APP (2020) 16 NWLR (PT. 1749) PG 28 AT PG 60** where it was held thus:

> ***"Equity acting in person am, would not allow a party to benefit from his own inequity, it insists that whoever comes to it for justice, must not come to the temple of Justice with dirty hands".***

He therefore prayed this Honourable court to grant all the reliefs to the Claimant and dismiss the counter claim.

On the other hand, the learned counsel for the Defendant, U. S. SAAWUAN ESQ distilled two issues for determination by this Honourable court, namely:

(a) Whether the Claimant has made out any reasonable or legally cognizable cause of action against the Defendant/counter Claimant to entitle her to the reliefs sought.

(b) Whether the Defendant/counter Claimant has established her counter claim and is entitled to the orders sought therein, including possession, rent arrears, and mesne profits.

In arguing the first issue distilled for determination by this Honourable court the learned counsel for the Defendant submitted that a cause of action does not exist in the case of the Claimant. In a bid to define a cause of action the learned counsel referred to a number of judicial authorities that include **DIAMOND PET. INT. LTD. V. GOV. CBN (2015) 14 NWLR (PT. 304) PH 128** where cause of action is defined as the entire set of facts or circumstances which gives a person the right to judicial reliefs. According to the learned counsel for the Defendant a critical review of both oral and documentary evidence before this Honourable court reveals that the shop was not locked by the Defendant, as a result of which the Claimant has not disclosed a cause of action against the Defendant. He submitted that the refusal or inability of the Claimant to pay her rent negates any claim of wrongful conduct by the Defendant/counter Claimant has failed to disclose any valid cause of action as the Claimant is not only in breach but she is also not entitled to the reliefs she seeks before this Honourable court or any relief whatsoever. He submitted that the Claimant has not denied being in arrears of rent from August 2019 to the time of filling this suit.

This, according to him needs no further proof having been admitted by the Claimant. On this the learned counsel referred to the cases of **NAFDAC V. REAGAN REMEDIES (2019) 17 NWLR (PT. 1700) PG 1 AT PG 56** and **EGBUNIKE V. A. C. B. LTD (1995) 2**

NWLR (PT. 375) PG 34. He specifically referred to the case of **AIRTEL NETWROKS LTD. V. GEORGE (2015)4 NWLR (PT. 1448) PG 60 AT PG 87 PARAS F - G** where the Court of Appeal stated that:

> ***"A breach of covenant to pay rent as stipulated in an agreement is a continuous one which entitles the landlord or lessor to intervene and take necessary action at his convenience, except there is a provision in the agreement or any statute limiting the time to enforce the terms and conditions in the agreement relating to a breach of same".***

It is learned counsel's submission that the Defendant/counter Claimant in the instant case, neither forcibly evicted the Claimant nor physically locked her out but merely exercised it's right to withhold access in light of a persistent breach. He further submitted that the shop in question was locked up by the Defendant in legitimate business response to a chronic breach of contract and as contained in the Tenancy Form signed by the Claimant. On this principle of strict adherence of the terms of tenancy relationship and contractual agreement between the parties the learned counsel referred to the case of **UDIH V. IZEDONMWEN (1990) 2 NWLR (PT. 132)PG 35 AT PG 365 PARA E** where the court held that:

> ***"The relationship of landlord and tenant is a contractual one and being a matter of contract, it's terms cannot be altered by either party without the agreement of the other subject to the provision of any statute governing the type of tenancy".***

In arguing the second issue formulated for determination by this Honourable court, the learned counsel submitted that the

Defendant/counter Claimant has led uncontroverted and cogent evidence in support of her counter claim establishing that:

a. *That the Claimant was a yearly tenant of the Defendant/counter Claimant who defaulted in rent payments from August 2019 to August 2021 amounting to two full years as unpaid rent.*
b. *That despite repeated demand orally and in writing the Claimant refused to give up possession but rather locked up the shop and retained the key.*
c. *That the Defendant/counter Claimant has therefore suffered loss of revenue, hardship and unnecessary litigation expense, all of which are directly attributable to the Claimant's intransigence.*

He submitted that where evidence is not challenged or controverted, and is not manifestly false, the court is bound to accept and act upon it. He referred to the case of **LANRE V. STATE (2019) 3 NWLR (Pt. 1660) pg 506 at pg 517 Paras D - E.** Which is to the effect that a court is bound to accept and act upon an uncontroverted evidence.

Similarly, he referred to the case of **UDIH V. IZEDONMWEN** (supra) where it was held that:

> ***"A landlord is entitled to arrears of rent up to the date the tenancy is effectively determined by the Notice to quit"***.

In addition, it was held in the above-mentioned case of **UDIH V. IZEDONMWEN** (supra) that:

> ***"In a claim for mesne profits, a landlord by implication is challenging the continued occupation of the premises by the***

tenant whom he now regards as a trespasser and is therefore claiming damages for being kept out of possession".

The learned counsel equally referred to the earlier cited case of **AIRTEL NETWORKS LTD. V. GEORGE** (supra) pg 56 where it was held that:

"Re - entry means the act or an instance of retaking possession of land by someone who formerly held the land and who reserved the right to retake it.....It also means a landlord's resumption of possession of leased premises upon the tenant's default under the lease".

The learned counsel for the Defendant/counter Claimant finally urged this Honourable court to grant all the reliefs claimed by the Defendant/counter Claimant and dismiss the case of the Claimant.

Arising from the foregoing analysis are the following issues formulated by this court for determination, namely:

1. **Whether notwithstanding the failure of the Claimant to pay rent the law recognises self-help by landlord to eject tenant.**
2. **Whether a tenancy agreement is capable of stopping parties from seeking redress in court.**
3. **Whether a landlord can claim mesne profit without service of proper notice to quit.**
4. **Whether either of the parties has proved his case to be entitled to the respective reliefs sought.**

It is the submission of the learned counsel to the Defendant that even if the shop was locked up by the Defendant it was done in

legitimate business response to a chronic breach of contract and as contained in the Tenancy Form signed by the Claimant. It will be in the interest of Justice to refer to the content of the said Tenancy Form signed by the Claimant.

The Tenancy Request Form **(Exhibit PD1)** attached to the statement of defence duly signed by the Claimant contained some conditions, one of which is:

> ***"If a Tenant does not renew tenancy after 3 months of expiration we shall takeover possession of the shop".***

The crucial question to be determined by this Honourable court in interpreting the above stated condition is whether this gives the landlord the permission/power to resort to self-help in ejecting the tenant for the purpose of taking possession. This crucial question has been answered in a number of judicial authorities including the Apex Court of Nigeria. It equally means that the Tenancy is determined by effluxion of time on the 25th August, 2019. In the same vein, it should be revealed that several correspondences were exchanged between the parties in respect of the subject matter of this suit with a view to affirming the expiration of the tenancy and the failure of the Claimant to pay her rent when it was due.

The Defendant via H. M. ADAMU & ASSOCIATES, ESTATE SURVEYORS, Valuers and Property Consultants by a letter dated the 3rd September, 2019 wrote to the Claimant a letter titled ***"NOTICE OF REMINDER FOR THE PAYMENT OF YOUR SHOP RENT"*** where it was stated as follows:

> ***"Please note that failure to pay your rent as at when due, we will have no option but to take action against you without***

further recourse to you.... We are further constrained to inform you that failure by tenant to renew his/her tenancy at the expiration date will leave us with no option but to apply the necessary enforcement to recover the shop and rent it to those in our awaiting list".

In a reaction to the above notice of reminder, the Claimant wrote a letter titled ***"AN APPEAL TO REOPEN SHOP NO. 300/291, EL - RUFAI, PLAZA BLOCK B2 AT GARKI INTERNATIONAL MARKET*** addressed to the MANAGING DIRECTOR URBAN SHELTER LIMITED dated the 27th January, 2021 pleading for the shop locked up by the Defendant to be reopened. A follow up letter from a lawyer was again sent to the Defendant titled ***"ILLEGAL AND WANTON CLOSURE OF SHOP NO. 300/291, EL - RUFAI PLAZA, BLOCK B2 GARKI INTERNATIONAL MARKET*** dated the 8th February, 2021. The content of the said letter partly states as follows:

"Landlord and the Tenant relationship is comprehensively regulated by law enacted by the Federal Republic of Nigeria and duly gazetted. We make bold to state that the law does not make room for self help and oppression of tenant as exhibited by your company".

However, instead of that Defendant to take hint of the content of the foregoing correspondence and do the needful, they sent a letter to the Claimant titled ***"RE: ILLEGAL AND WANTON C,DESIRE OF SHOP NO. 300/291, EL - RUFAI PLAZA, BLOCK B2, GARKI INTERNATIONAL MARKET*** dated the 15th February, 2021 which partly reads:

> ***"Accordingly, the locking up of your client's shop after several notices of reminder and demand for payment of rent following the determination of the tenancy by effluxion of time, was done in line with the condition/agreement guiding the hitherto landlord/tenant relationship between your client and our client".***

Equally too, a passionate Appeal by the Claimant to remove wedding items from the locked shop was refused by the Defendant who took offence at the institution of the suit against them at the FCT High Court when they partly stated that:

> ***"..... but rather than maintain correspondence with us and see how the issues between your client and our client can be amicably settled as expressly suggested in the closing paragraph of our said letter of 15th February, 2021, you proceeded to institute an action against our client at the High Court of the Federal Capital Territory, Abuja."***

This Honourable court has gone this far in reproducing some relevant aspects of the various correspondence between the parties with a view to proving that despite the failure of the Claimant to pay her rent when it was due in 2019, her shop was locked up by the Defendant without any statutory Notice to quit, not even the mandatory seven-day notice to quit. The Claimant was also not taken to any court for the purpose of obtaining any order of the court directing the Claimantto give up possession to the Defendant, rather the Defendant opted for self-help in forcing out the Claimant by locking up her shop. This is indirect forceful injection as according to the Defendant, "after searching for the Claimant to no avail, added a padlock to that of the Claimant to prevent the Claimant or

any other person from taking away the goods and wares in the shop without notice to the Defendant and payment of outstanding rent". These are contained in paragraphs 8 and 14 of the statement of defence dated the 20th December, 2021 **(i.e., Exhibit P12).**

It is trite law that in the instant situation, as shown in this suit, all that the landlord is expected is to serve the tenant with a seven (7) day notice of owner's intention to apply to court to recover possession. On this note, I refer to the case of **SPLINTERS (NIG) LTD V. OASIS FINANCE LTD (2013) 18 NWLR (Pt. 1385) pg 188 at pgpg 221** where the Appellants for a fixed period of 2 years from 1st January, 2002 to 31st December 2001. The lease was later renewed on 1st January 2002 to 31st December 2002 and later 1st January 2003 to 31st December 2003. In 2004, the Respondents sued for possession. The Appellants contended that they were not served with statutory notices. The Respondents claimed they did but could not prove same. The trial court held that since the tenancy was for a fixed term, service of notices was superfluous and granted the Respondent's relief. The Court of Appeal in allowing the Appeal held:

> ***"It is obvious that if at the time the landlord seeks to recover his premises, the tenancy had already expired, it is reasonable to assume that there would be no need for a notice to quit. All the landlord would be required to serve on the tenant would be the statutory 7 days' notice of intention to apply to court to recover possession of the premises"***.

Similarly, in the case of **CHAKA V. MESSRS AEROBELL (NIG) LTD (2012) LPELR - 8392 (CA)** and **FOLARIN V. AGUSTO (2023) LPELR - 59945 (SC) ph 33 paras C - E** it was stated that a

tenant of the like of the Claimant in the instant suit automatically becomes a statutory tenant created so by a piece of legislation such as Tenancy laws for the various states of the Federation. In other words, statutory tenancy comes into being by operation of the law after the effluxion of the tenancy. Contrary to the will of the landlord, the law protects the tenant from being evicted by the landlord unless the landlord serves a seven (7) day notice of owner's intention to recover the said premises and the 7 days period has lapsed after the expiration of the tenancy. Even at that the tenant cannot be evicted by the landlord unless the Tenant willfully surrenders possession of the property or a court makes an order for the eviction of the Tenant and it is the duty of the court alone to enforce the order to evict the Tenant.

In the circumstances therefore, this court is of the view that the failure of the Claimant to pay rent does not give the landlord the audacity to lock up the shop, it is tantamount to self-help which is not acceptable in law. Consequently too, by the foregoing judicial authorities, it is clear that the content of a Tenancy Agreement, like the Tenancy Request Form in the instant case does not prevent any of the parties to seek redress in court. Infact, from the various correspondences exchanged by the parties, the Defendant was expected to have served the Claimant with a seven-day notice of intention to apply to court to recover possession and eventually serve the Claimant with the necessary processes to recover possession instead of locking up the Claimant's shop since 2020.

The next issue to be determined is whether the landlord can claim mesne profit without service of proper notice to quit. The term 'mesne profit' has been said to be used to describe the sum due to a

landlord from the time his tenant ceases to hold the premises as a tenant to the time such tenant gives up possession. In the case of **AFRICAN PETROLEUM LTD V. OWODUNMI (1991) 8 NWLR (Pt. 210) pg 391**, **'mesne profit'** was defined as "***Intermediate profiteidest profits",*** accruing between two points of time, that is, between the date when the tenant ceases to hold the premises as a tenant and the date when he gives up possession".

In the present suit, the Defendant failed or neglected to take appropriate action against the Claimant as required by the law. Ordinarily, mesne profit is expected to start accruing against a tenant from the date he is issued a seven-day notice of the landlord's intention to approach court to recover possession of his premises. This was only done by the Defendant via his counter- claim before this Honourable court which was filed on the 26th September, 2023. By this action, the Defendant has then given a notice to the Tenant/Claimant of his intention to recover possession of his premises as required by the law. This position has been approved by the law. This position has been approved by the Apex court in the case of **PILLARS NIGERIA LTD. V. WILLIAM KOJO DESBORDES & ANOR (2021) LPELR - 55200 (SC) PGA 24 - 26** where it was held thus:

> ***" serving a writ i.e., filling case at court by the property owner against the tenant in order to recover possession of the rented property constitutes a valid notice for tenant to give up possession".***

This being the position of the law it can safely be concluded that this Honourable court has the requisite jurisdiction to entertain the counter claim for the recovery of possession of the property in

question. It is equally the position of this court that the Defendant, the (landlord) is entitled to the payment of mesne profit from the tenant, starting from the 13th November, 2023 when this suit was filed before this Honourable court. After all, it has been held in the case of **CHISCO TRANSPORT CO. NIG. LTD V. MARIA B. WARMATE (2019) LPELR 47058 (CA) PAYES 4 - 9 PARAS F - E** that:

> ***"In the first instance, the primary purpose in Law of service of the 2(two) statutory notices to quit and Owner's intention to recover possession as duly to the notice of the tenant that his/her tenancy has been terminated and that the aggrieved landlord was intent on heading to the court to seek reprieve/redress where the tenant fails to give up possession".***

The property the above judicial pronouncements is to confirm the fact that the Defendant in the present suit had a duty to have served the Claimant with at least a seven-day notice of the landlord's intention to head to court to seek redress since the Claimant failed to give up possession. It does not lie on him to take the laws into his own hand by locking up the shop against the Claimant. He has a duty to seek redress in court and not through self-help as it has done in this suit. It is therefore the position of this Honourable court that it was the Defendant that locked up the shop against the Claimant and not otherwise.

Furthermore, this court must be guided by the wordings of the Tenancy Agreement between the parties dated the 23rd August 2013 and the rent yearly paid by the Tenant and accepted by the landlord, that is, annual rent of the sum of **₦396,000** (Three Hundred and Ninety- Six Thousand Naira) only per annum in respect of shop No.

300/291, El - Rufai Plaza, Block N2, Garki International Market. This court is also fortified by the decision of the case of **CHAKA V. MESSRS AEROBELL (NIG)Ltd 12 NWLR (Pt. 1314) ph 269** where it was held that:

> ***"A claim for mesne profits starts from the date of service of the process for determination of the tenancy.....In ascertaining the amount that may constitute a reasonable satisfaction for the use and occupation of premises held over by the Tenant the previous rent is merely a guide".***

Thus, this court must be guided by the previous rent agreed upon by the parties, that is, **₦396,000.00** (Three Hundred and Ninety-Six Thousand Naira) only.

The Claimant/Defendant in the counter claim filed a reply to the Defendant's statement of defence and a defence to the counter claim and denied entirely all the claims by the Defendant/counter Claimant specifically denied having locked up her shop but rather maintained her earlier position that the shop in question was locked up by the Defendant and its agents. The Defendant/Claimant further denied the Defendant having ever looked for her when the two of her mobile phone numbers are in possession of the Claimant/Defendant as contained in the Tenancy Request Form duly signed by the Claimant. It was also reasserted that since the Defendant/Claimant admitted having added another padlock to that of the Claimant/Defendant, it needs no further proof as there was no way the Claimant would have gotten access to the shop. In the circumstances of the content of the entire Reply to the Defendant's statement of defence read together with the earlier analysis and judicial authorities referred to in this judgment it is clear that the act

of the Defendant in locking up the Claimant's shop No. **300/291**, El - Rufai Plaza Block **B2** at Garki International Market from January 2020 till date for failure to pay rent is unlawful, illegal and reprehensible.

The Claimant also claimed for an order directing the Defendant to open the Claimant's shop No. **300/291** El - Rufai Plaza, Block **B2** at Garki International market. It is not in doubt that the Claimant/Tenant is not denying the fact that the Defendant is the owner of the ship in issue. There is therefore no dispute as to the title of the property in question. It is equally glaring that the landlord no longer want the Tenant in his property. The only issue before the court is the failure of the landlord to follow the due process in trying to recover the possession of the shop rented to the Claimant. This being the case, it will not be in the interest of justice to grant this relief. Instead the first relief of the counter Claimant ought to be granted and is accordingly granted. It is hereby ordered that the Claimant/Defendant in the counter claim should give up possession of the premises known as No. **300/291** El - Rufai Plaza, Block **B2,** Garki International Market to the Defendant/counter Claimant immediately. In consequence, the Defendant/landlord is hereby ordered to grant access to the Claimant to remove all her belongings from the said shop No. **300/291** El - Rufai Plaza Block **B2**, Garki International Market, Abuja.

The Claimant also prayed this Honourable court for award of aggravated/exemplary damages for locking up the shop and refusal to open same inspite of several appeals. These are damages that are alleged to have been sustained in the circumstances of a particular wrong which must be specifically claimed and proved to be

awardable. See the case of **O. M. T. C. LTD. V. IMAFIDON (2012) 4 NWLR (PT. 1290) PG 332.** In evaluating this particular relief reference must be made to the content of paragraphs 17 - 26 of the Claimant's averments wherein she expressed her commercial and mental loss to her as a result of the Defendants act of locking up her shop. The fact that her shop was locked up, she could not continue with her business for over two years coupled with the fact that she was callously prevented from getting access to the properties she wanted to use for the wedding of her daughter despite the Defendants having acknowledged the receipt of the wedding card/invitation annexed to her letter of Appeal to be allowed to remove those items. The acts of the Defendantis in human, cruel, frustrating, callous and wicked which ought to attract exemplary damages in favour of the Claimant.

I am satisfied that the content of paragraphs 15, 16 and 20 of the witness statement on oath of the Claimant has said it all. These averments are hereby reproduced verbatim as follows:

> **Para 15: From January 2020 to date, I have been out of the market and have suffered terribly with my four children some of which are in different schools.**
>
> **Para 16: My textile materials and other articles locked up in the shop for more than one year now are worth about N10,000,000.00 (Ten million naira) only and the items include...." These items were all mentioned in paragraph 16 referred to above.**

Para 20: The unlawful act of the Defendant has put me through serious mental torture, humiliation and economic loses".

Again, in a reaction to the refusal of the Defendant to allow her remove some items to be used in the wedding of her daughter the Claimant in paragraph 23 lamented that:

Para 23: "I was devastated and had to look elsewhere for assistance to borrow and as well buy some of those things that I already have in my shop".

The Claimant summarised her bitter experiences when she stated in paragraph 24 of her witness statement on oath that:

"Para 24: The recalcitrant attitude of the Defendant in locking up a commercial shop for over a year and refusal to open same inspite of several pleas coupled with the brazen admission by her through her solicitors that she locked up the shop, attracts exemplary and aggravated damages in the circumstances".

I am convinced that the above stated averment of the Claimantwere never controverted in any way by the Defendants. Infact, the Defendant admitted having locked up her shop and even added another padlock to prevent the Claimant from getting access to her shop. Most importantly too, the learned counsel for the Defendant, Val. Obajulu & Co. in their reply to the Claimant's solicitor's letter blatantly restated the fact that they were not ready to unlock the shop notwithstanding having acknowledged the wedding invitation of the Claimants daughter. In view of the foregoing analysis this court finds that the prayer for aggravated/exemplary damages

deserves the favour of this court. See the case of **SBN PLC V. C.B.N (2009) 6 NWLR (Pt. 1137) pg 237 at pg 308 - 409**. Consequently, the Defendant is hereby adjudged to be entitled to be paid aggravated/exemplary damages for having caused unnecessary hardship, mental torture, economic loss and embarrassment to the Claimant particularly having locked up her shop for over a year and its refusal to open same despite several and repeated appeals.

Similarly, the Claimant prays for general damages in the sum of **₦10,000,000.00** (Ten Million Naira) only for loss of income suffered from January 2020 till date. This court in adopting the relevant paragraphs of the witness statement on oath of the Claimant earlier referred to in this judgment is of the humble view that this relief ought to be granted and is accordingly granted. After all, in the case of **TAYLOR V. OGHENEOVO (2012) 13 NWLR (Pt. 1316) pg 46**, it was held that General damages are damages which the law implies or presumes to have accrued from the wrong complained of or as the immediate direct and proximate result, or the necessary result of the wrong complained of. A trial court has discretionary powers. It has the duty to calculate what sum of money will be reasonably awarded in the circumstances of the case".

It should also be observed that litigation expenses are legitimate claim when a party is compelled to seek judicial redress due to the wrongful conduct of the opposing party. Given the facts of this case, including the locking up of the shop of the Claimant without an order of any court of law, frustration, unjustified deprivation from use of items/materials inside the shop for her daughter's wedding the Claimant is entitled to recover reasonable costs of this action. The

Claimant is therefore adjudged to be entitled to the costs of litigations of this case.

Finally, the claim by the counter Claimant for an order for the payment of the arrears of rent ought to be considered in the light of the evidence before this court.

The Claimant in paragraph 5 of her witness statement on oath admitted that she has been in possession of the said shop and was paying her rent regularly up to 2019. She further admitted in her paragraph 6 to the effect that she was unable to pay her rent for the period of August 2019 to August 2020, and that by January 2020, after five months of expiration of her rent the Defendant without allowing her to take out any of her Articles of trade and some personal effects from the shop locked up the shop without any order from a court of law. The counter Claimant prays this Honourable court for an order directing the Claimant to pay the Defendant the rent of two years owed by the Claimant from the year 26th August 2019 to 25th August, 2021.

It is trite law that a landlord is entitled to arrears of rent owed by the tenant. However, this must be considered in the light of the available evidence before the court. In this wise paragraph 7 of the Claimant's witness statement on oath ought to be reproduced verbatim and it reads:

> ***"By January, 2020 barely five (5) months after the expiration of my rent, the Defendant without any prior notice to me, forcefully locked up my shop without allowing me to take out any of my articles of trade and some personal effects"***.

The Defendant through their counsel, VAL OBIAJULU & CO by a letter dated the 15th day of February 2021, in a reply to the Claimants letter appealing to the Defendant to open the shop for her to take some items to be used for the wedding of her daughter stated partly that:

> ***"Accordingly, the locking up of your clients shop after several notices of reminder and demand for payment of rent following the determination of the tenancy by effluxion of time, was done in line with the condition/agreement guiding the hitherto landlord/tenant relationship between your client and our client"***

In addition, in Exhibit **P12** which was a suit struck out before the Claimant filed the present one the Defendant admitted that they added a padlock to that of the Claimant to prevent the Claimant or any other person from taking away the goods and wares in the shop without notice to the Defendant and payment of outstanding rent.

It is crystal clear that after five (5) months of the expiration of the tenancy between the parties the Defendant locked up the shop against the Claimant. This fact was never controverted or denied by the Defendant to the satisfaction of this court. This is nothing less than self-help which is not allowed in law. It is trite law that equity does not allow a party to benefit from it's own wrong. Thus, in the case of **ONYENEYIN V. AKINKUGBE (2010) 4 NWLR (Pt. 1184) ph 265** it was held that:

> **"It is a general rule that equity does not aid a party at fault, and this maxim has been variously expressed as follows:**

- **No one is entitled to the aid of the court of equity when that aid has become necessary through his or her own fault.**
- **Equity does not relieve a person of the consequences of his or her own carelessness.**
- **A court of equity will not assist a person in extricating himself or herself from the circumstances that he or she has created.**
- **Equity will not grant relief from a self-created hardship.**

In the instant case, evidence areabound that the Defendant forcefully and brazenly locked up the shop of the Claimant from January 2020 to date without allowing her access to the shop. It will not be in the interest of Justice to allow the Defendant to gain from his own self-created hardship (if any). It is therefore the opinion of this Honourable court that the Defendant can only claim arrears of rent from the Claimant for the five (5) months she was using the shop without paying her rent before the shop was locked up by the Defendants in January 2020. Consequently, the prayers of the counter Claimantis therefore granted only to the extent that the Claimant is ordered to pay the arrears of rent for the five (5) months she occupied the shop after the expiration of the tenancy agreement before her shop was locked up by the Defendant in January 2020. The Claimant was therefore in arrears of the month of August 2019 to December 2019 before her shop was locked up by the Defendant in contravention of the Rent Legislation in Nigeria. In support of this position of the law, the case of **PANASIAN AFRICAN CO. LIMITED V. NATIONAL INSURANCE CORPORATION (NIG) LTD (2004) LOCUS CLASSICUS, FUNMI QUADRI**

(MRS) pg 525 at pg 531 Ratio 11 is of assistance here where it was held that:

> ***"Accordingly, by sections 12 and 13 of the rent Edict invalidates any agreement which by its terms or provisions seeks to preclude all tenants (to whom the Edict applies) from advantage of or exercising their rights under the edict and enjoins the Courts to lean in favour of implementing the rights of tenants under the Edict".***

It is therefore the duty of every court to protect the rights of the tenant against the tyranny and shylock like manner of the landlords. It equally shows that the so - called Tenancy Request Form signed by the Claimant does not give any right on the landlord to resort to self-help instead of seeking redress in court.

In conclusion, the court has put the totality of the respective evidence on an imaginary scale of justice and finds it tilts partly in favour of the Claimant as well as the Defendant. The court holds that both parties partly succeed in their respective prayers having satisfactorily discharged the burden of proof upon them.

Accordingly, judgment is hereby entered as follows:

It is hereby declared that the act of the Defendant in locking up the Claimant's shop No. **300/291** El - Rufai Plaza, Block **B2** at Garki International Market from January 2020 till date for failure to pay rent is unlawful, illegal and reprehensible.

An Order is hereby made directing the Defendantto pay the sum of **₦2,000,000.00** as aggravated/exemplary damages for locking up the shop and refusal to open same in spite of several appeals.

An order of this Honourable court is hereby made directing the Defendant to pay the sum of **₦1,000,000.00** as general damages to the Claimant for loss of income suffered from January 2020 till date.

An order of this court directing the Defendant to pay the sum of **₦1,000,000.00** to the Claimant as cost of litigation in favour of the Claimant.

On the other hand, an order of this Honourable court directing the Claimant to give up possession of premises known as No. **300/291** El - Rufai Plaza, Block **B2**, Garki International Market Abuja forthwith in favour of the Defendant/Counter Claimant is hereby granted.

An order of this Honourable court directing the Claimant to pay mesne profits in favour of the Defendant from August 2019 to December 2019 that is the period she was unable to pay her rent.

Finally, the Claimant and the Defendant are both entitled to **10%** of their respective Judgment sum from the date of Judgment to date of final liquidation of the Judgment sum which is statutorily provided in the FCT High Court Civil Procedure Rules (2025).

SIGNED:
HON. JUDGE
01/12/2025.

Appearance:

S. M. Jimmy, Esq, with U. S. Attah, Esq, for the Claimant

A. I. Obiechina, Esq, for the Defendant