

IN THE DISTRICT COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA MAGISTERIAL DISTRICT
HOLDING AT ABUJA

PLAINT NO: CV/679/19

CV/205/2019

BETWEEN

ALHAJI ABUBAKAR ABDULKADIR..... PLAINTIFF

AND

ABDULATEEF G. EJIWUNONI DEFENDANT

PLAINTIFF'S FINAL WRITTEN ADDRESS

1.0 INTRODUCTION:

1.1 The Plaintiff by a Plaint dated and filed on 25th September, 2019 instituted the instance suit against the Defendant claiming the following reliefs:

- i. *Possession of the Plaintiff's aforesaid premises being a THREE (3) bedroom flat situated at, Plot 1242, Godwin Ogbadu Street, B07 Katampe District, Abuja FCT from the defendant.*
- ii. *Balance of the remaining half of the rent paid by the Defendant for the second term of his tenancy which is the sum of ₦600,000.00 (Six Hundred Thousand Naira) only.*
- iii. *Arrears of rent owed to the Plaintiff by the Defendant from the 1st of December 2018 till date.*
- iv. *Mesne profit at the monthly rate of ₦100,000.00 (One Hundred Thousand Naira only) from 30th November 2018 running till the Defendant finally delivers up possession or until Judgment is delivered and possession is given to the plaintiff.*
- v. *10% annual interest on the judgment sum from the date of judgment till when defendant finally liquidates the entire judgment sum.*
- vi. *The cost of filing this suit.*

Address ~~₦100~~
Leaf ~~₦280~~
R/N ~~₦300~~
Sum ~~₦12056213~~
Date 21-7-2020

- 1.2 The Plaintiff (PW1) opened his case on 17th **December, 2019** and was examined-in- chief by his Counsel. PW1 tendered 5 (five) documents in support of his case which were admitted in evidence and marked as **Exhibits AA1-AA5**. Thereafter, the Defendant's Counsel cross-examined PW1 thereafter re-examined by his Counsel after which the Plaintiff closed his case and the matter was adjourned to 2nd March, 2020 for Defence.
- 1.3 The Defendants open its case and called only one witness which is the defendant himself. The defendant did not rebut or refute the claim of the plaintiff rather he admitted to the claim of the plaintiff.
- 1.4 The defendant closed his case and the matter was adjourned to the 29th of April, 2020 for adoption of Final Written Addresses.
- 1.5 On the 29th of April, 2020 the matter could not go on due to the lockdown directives by the Federal Government of Nigeria. However, the defendant failed to file their final address even before the due date of 29th April, 2020 after despite the repeated phone calls to the defendant and his counsel. It is in view of the above that the plaintiff filed their address before this Honourable Court.

2.0 ISSUE FOR DETERMINATION

- 2.1 The sole issue that arises for determination in this matter is:

“Whether from the facts and circumstances of this case, the Plaintiff has proved his case to entitle him to the reliefs sought in this suit?”

3.0 LEGAL ARGUMENT

- 3.1 It is the evidence of the Plaintiff before this Honourable Court that he entered into a tenancy relationship with the Defendant on 31ST **December,**

2016 wherein the Defendant made his first annual rental payment in the sum of ~~N1,~~ **200,000.00 (One Million Two Hundred Thousand Naira only)** to the Plaintiff for in respect of a THREE (3) BEDROOM Flat situated at Plot 1242, Godwin Ogbadu Street, B07 Katampe District, Abuja FCT for the year 2016 to 2017. It is also in evidence before this Honourable Court that the Defendant paid the sum of 500,000.00 (Five Hundred thousand naira) as part payment for the year 2018 and since then the defendants has failed to pay his rent till date.

- 3.2 It is important to note that the Defendant's rent expired by effluxion of time since **1st of January, 2019 with an areas of rent balance of 700,000 (Seven Hundred thousand naira)** and all efforts and attempts by the Plaintiff to get the Defendant to pay his outstanding rent and renew his rent and or give vacant possession of the Shop he occupies illegally has been fruitless.
- 3.3 Consequently, the Plaintiff on **3rd May, 2019** issued and served the Defendant with a **Notice to Quit on the 4th May, 2019**. A copy of the said Notice to Quit is in evidence before this Honourable Court and marked as **Exhibit AA1**. Furthermore, the Plaintiff on **30th August, 2019** issued and served on the 15th September, 2019 on the Defendant with a **seven (7) day Notice of Owner's Intention to Apply to Recover Possession**. A Copy of the said 7 days notice of owner's intention to apply to recover possession alongside marked as **Exhibits AA2**
- 3.4 It is further submitted that the Defendant having failed to indicate his interest to renew the tenancy on the property for the further period and failure to vacate same property, after been duly issued the requisite Statutory Notices by the Plaintiff, the Defendant is liable to be evicted from the property which necessitated the instant action before this Honourable Court.

The Defendant in this case failed to indicate his interest to renew the tenancy by paying his rent and equally refused to vacate the said property.

- 3.5 It is respectively submitted that the Plaintiff served the Defendant with the relevant notices as provided under the law before approaching this Honourable Court as reflected in paragraphs of the application for Plaint. As stated earlier, the tenancy relationship between the parties came to an end by effluxion of time upon the expiration of the Defendant's rent on **1st January, 2019 though with an arrears of rent of 700,000.00(Seven Hundred thousand naira)**. Thus, Section 7 of the Recovery of Premises Act, LFN (Abuja) 1990 provides:

“When and so soon as the term or interest of the tenant of any premises, held by him at will or for any term either with or without being liable to the payment of any rent, ends or is duly determined by a written notice to quit as in Form B, C or D, whichever is applicable to the case, or is otherwise duly determined, and the tenant, or, if the tenant does not actually occupy the premises or only occupies a part thereof, a person by whom the premises or any part thereof is actually occupied, neglect or refuses to quit and deliver up possession of the premises or of such part thereof respectively, the landlord of the premises or his agent may cause the person so neglecting or refusing to quit and deliver up possession to be served, in the manner hereinafter mentioned, with a written notice, as in Form E signed by the landlord or his agent, of the landlord's intention to proceed to recover possession on

a date not less than seven days from the date of the service of the notice”.

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- 3.6 It is clear from the evidence before this Honourable Court that the Defendant was served with a Quit Notice and a seven (7) day Owner’s Intention to apply to recover possession after the expiration of his rent in line with the provisions of the Recovery of Premises Act. The issuance of the earlier notice to quit on the Defendant was superfluous. It was just a means of giving him the opportunity to yield vacant possession voluntarily. Thus, in the case of **COUTINHO CARO & CO. (NIG.) v. OBIORA (INVT.) LTD (2014) ALL FWLR (PT. 575) 747 @ 749, Ratio 3** of the Court of Appeal, wherein it was held thus:

“The purpose of statutory notice is to give the tenant the opportunity of quitting the premises voluntarily before the institution of an action or to put him on notice and prevent parties taking laws into their hands or attempting to regain possession vi et armis. Where a tenancy has expired by effluxion of time, notice to quit is superfluous. In the instant case, where the suit was in the court for eight years before possession was eventually granted the respondent, the lower court was right in the circumstances to have ordered possession in favour of the respondent”.

(underline supplied)

- 3.7 It is axiomatic from the foregoing, that the Plaintiff is entitled to all his claims particularly, **vacant possession** as per the Complaint, the Defendant

continued in the occupation of the premises since the expiration of his rent and or the term granted to him, which ended on **1st January, 2019** till date contrary to any known law. The provision of **Section 7 of the Recovery of Premises Act, 1990**, Abuja was reaffirmed in the case of **IHEANACHO v. UZOUCHUKWU (1997) 2 NWLR (Pt. 487) 257 @ 269-270 paras. (H)-(A)**, where the Supreme Court held thus:

"The landlord desiring to recover the premises let to a tenant shall firstly, unless the tenancy has already expired, determine the tenancy by service on the defendant of an appropriate notice to quit. On the determination of the tenancy, he shall serve the Defendant with the statutory 7 day's notice of his intention to apply to court to recover possession of the premises. Thereafter the landlord shall file his action in court and may only proceed to recover possession of the premises according to law in term of the judgment of court in the action."

- 3.8** It is abundantly clear from the facts before this Court that the term granted to the Defendant ended on **1st January, 2019** but the Defendant failed to renew or vacate the premises. The above decision of the Supreme Court above was adopted by the Court of Appeal in the recent case of **SPLINSTER (NIG.) LTD. v. OASIS FINANCE LTD. (2013) 18 NWLR (Pt. 1385) 188 @ 220-221 paras. (G)-(D)** wherein the Court specifically pronounced on the need to serve just a 7 (seven) day Statutory Notice where the tenancy had already expired and held as follows:

"As clearly set out in Iheachano v. Uzochukwu (supra) heavily relied on both sides, it is only when the tenancy

has not expired that there will be need to determine same by notice to quit. 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 will be no need for quit notice. All the landlord would be required to serve on the tenant would be statutory 7 day's notice of intention to apply to Court to recover possession of the premises."

See also the cases of **NDUBUISI v. SHOBANDE (2013) LPELR- 22770 (CA)**, **ELOCHIN (NIG.) LTD. v MBADIWE (1986) 1 NWLR (Pt. 14) 47**; **AYINKE STORES LTD. v. ADEBOGUN (2008) 10 NWLR (Pt. 1096) 612** and **EKPERE v. AFORIJI (1972) 3 SC 113**.

3.10 It is further submitted that the Plaintiff herein is entitled to *mesne* profit. This is because the Defendant has continued to remain in the premises after the determination of his tenancy up till this moment.

3.11 Section 12 of the Recovery of the Premises Act, LFN (Abuja) 1990 provides as follows:

"The landlord may, either together with his writ or plaint for the recovery of the premises or in answer to a counter claim made in respect of any unexhausted improvements as hereafter provided, claim to recover, or to set-off, rent or mesne profits, or both, accruing in respect of the premises since the "ending" or determination of the tenancy down to the day appointed for the hearing, or to a proceeding day named in the plaint.

3.12 The above provision gives this Honourable Court the power to grant the claims for arrears of rent and *mesne* profit. Your Worship, the above provision, has been given judicial blessing in **ODUTOLA v. PAPERSACK (NIG.) LTD.** (2006) 18 NWLR 470 at page 496-497, paras. (H)-(A), where it was held that :

“The expression “mesne profits” is 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. Debs v. Cenico Nigeria Ltd. (1986) 3 NWLR (Pt. 32) 864. Mesne profits are the rents and profits which a trespasser has, or might have received or made during his occupation of the premises, and which he therefore he must pay over to the true owner as compensation for the tort which he has committed. See African Petroleum ltd. v. Owodunni (1991) 8 NWLR (Pt. 210) 391. Mesne profits mean intermediate profits, id est profits, accruing between two point 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. See Alhaji Ayinke Lawal (1994) 7 NWLR (Pt. 356) 253.,

3.13 Furthermore, Your Worship, the Defendant in this case is bound to pay for the period he held the premises over after the expiration of his rent in respect of the said premises. Thus, in the case of **OBIJIAKU v OFFIAH** (1995) 7 NWLR (Pt. 409) 510 @ 523, paras. (F)-(G) wherein the Supreme Court held thus:

“Mesne profit means the intermediate profit, that is profit accruing between the date that the

defendant/tenant ceases to hold the premises as a tenant and the actual date he gives up possession. See Omotesho v. Oloriegbe (1988) 4 NWLR (Pt.87) 225; and Udih v. Izedonmwemi (1990) 2 NWLR (Pt.132) 357. Mesne profits are awarded in place of rent where the tenant remains in possession after the tenancy agreement has run out or been duly terminated”.

- 3.14** It is humbly submitted from the foregoing that the evidence of the Plaintiff was not contradicted in any way by the Defendant who ignored, refused and or failed to enter appearance to defend this suit against him despite been served with all the hearing notices in this suit. It is trite that evidence not contradicted is deemed admitted.
- 3.15** It is respectively submitted that the failure of the Defendant to vacate the premises upon the expiration of the term granted to him is a breach of the tenancy contract between the Plaintiff and the Defendant. The failure of the Defendant to vacate the premises on **1st January, 2019** when his rent expired is a breach of contract.
- 3.16** It is respectively submitted with regard to cost, it is trite that cost follows event. The failure of the Defendant to vacate the property is what led to this instant suit. It is humbly submitted that the institution of this action by the Plaintiff against the Defendant is an occurred event which necessitates the award of cost against the Defendant in favour of the Plaintiff. Thus, in **MASTER HOLDING (NIG.) LTD v. OKEFIENA (2012) ALL FWLR (Pt. 648) 921 @ 925-926** wherein the Court of Appeal outlined the factors to consider in the award of damages thus:
- a. The summons fee paid,

- b. The duration,
- c. The number of witnesses called by the party in victory,
- d. The vexatious or frivolous nature of the action or defence of the party who failed in the litigation,
- e. The cost of legal representation, and
- f. The monetary value of the case.

3.17 The Plaintiff humbly prayed this Honourable Court for the cost of **N400,000.00 (Four Hundred Thousand Naira)** only for the expenses incurred in instituting and prosecuting this suit against the Defendant which has been exhibited before this Honourable Court.

3.18 Your Worship, the Defendant did not make any efforts to defend this matter rather what the Defendant did was merely to ask the Plaintiff whether it was the Plaintiff or someone else that served the Defendant with the Notice to Quit and the Plaintiff confirmed to this Honourable Court under re-examination that it was the Bailiff of this Honourable Court that severed the said Notice to Quit on the Defendant. Your Worship, it may interest this Honourable Court to know that the Notice to Quit was issued and served on the Defendant on **7th March, 2018** (**6 months** after the expiration of the Defendant's tenancy). We rely on our submission in **paragraphs 3.7 and 3.8** on the position of a Notice to Quit on a Defendant whose tenancy has expired by effluxion of time. The service of the said Notice to Quit on the Defendant **8 (Eigh) months** after the expiration of his tenancy with an areas of **700,000.00 (Seven Hundred thousand naira)** was a supperflous and nothing more. Assuming without conceding that the Plaintiff did not serve the Defendant with the said the Notice to Quit **6 (six) months** after the expiration of his tenancy, the question then is did the Plaintiff serve the Defendant with the **7 (seven) days** Owner's intention to recover possession **7**

(seven) months after the expiration of his tenancy? The answer is in the positive and which the Defendant did not deny during the hearing of this matter. Your Worship is most humbly referred to the decision of the Supreme Court in the case of **IHEANACHO v. UZOCHUKWU** supra and the decision of the Court of Appeal in case of **SPLINSTER V. OASIS FIANACE** supra in paragraphs 3.7 and 3.8 above with respect to the Notice to be served on a Defendant whose tenancy has expired by effluxion of time as in the instance case.

3.19 Your Worship, the Defendant knew even before coming to this Honourable Court that he had no defence to this matter.

4.0 CONCLUSION:

From the totality of our submission, this Honourable Court is humbly urged Your Worship to resolve this issue in favour of the Plaintiff and grant the claims of the Plaintiff against the Defendant as contained on the face of the Plaintiff.

Dated this 20 day of 07 2020




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LIST OF AUTHORITIES

- i. Cutinho Caro v. Obiora (2014) All FWLR (Pt. 575) 747
- ii. Iheanacho v. Uzochukwu (1997) 2 NWLR (Pt. 487) 257
- iii. Master Holding (Nig.) Ltd. v. Okefiena (2012) All FWLR (Pt.648) 921
- iv. Ndubuisi v. Shobande (2013) LELPR-22770 CA
- v. Obijaiku v. Offiah (1995) 7 NWLR (Pt. 409) 510
- vi. Odutola v. Papersack (Nig.) Ltd. (2006) 18 NWLR 470
- vii. Recovery of Premises Act, (Abuja) 1990, LFN
- viii. Splinster v. Oasis Finance (2013) 18 NWLR (Pt. 1385) 188