



**IN THE COMMUNITY COURT OF JUSTICE OF THE ECONOMIC COMMUNITY
OF WEST AFRICAN STATES (ECOWAS)**

HOLDEN AT ABUJA, NIGERIA

SUIT N°: ECW/CCJ/APP/24/13.

JUDGMENT NO: ECW/CCJ/JUD/03/18.

BETWEEN

Alhaji Oba Amasa

} Plaintiff

AND

1. Economic Community of West African
States (ECOWAS)

2. Economic Community of West African
States (ECOWAS) Commission.

3. The President, ECOWAS Commission, Abuja.

4. Kadare Desire Ouedraogo

5. Director of Administration, ECOWAS Commission, Abuja.

6. Mrs. Halima Ahmed.

} Defendants

BEFORE THEIR LORDSHIPS

1. Hon. Justice Friday Chijioke Nwoke ----- Presiding
2. Hon. Justice Hameye Founé Mahamadane ----- Member
3. Hon. Justice Yaya Boiro ----- Member

Assisted by:

Djibor Aboubacar Diakite

-- Registrar

REPRESENTATION OF THE PARTIES

1. Vembe Terence Terfa ----- For the Plaintiff
2. Daniel Lago (Director of Legal Affairs) ----- For the Defendants
3. Bola Olotu Esq. ----- For the Interested Party

SUBJECT MATTER OF THE PROCEEDINGS.

1. Claim for the sum of **N14, 700, 000.00** (fourteen million, seven hundred thousand naira) only being arrears of rent owed the Plaintiff by the 1st and 2nd Defendants for the tenancy years 2004/2005, 2005/2006, 2006/2007, 2007/2008 year half in respect of Six No. 4-

- bedroom flats known and situate at Plot 307, Gabes Street, Wuse District, Abuja.
2. Claim for 15% interest on the sum of **N14, 700, 000.00** (fourteen million, seven hundred thousand naira) only owed the Plaintiff by the 1st and 2nd Defendants since the year 2004.
 3. Breach by the Defendants of Covenant to pay rent contained in a tenancy agreement entered into by the Plaintiff with the 1st Defendant.
 4. Claim for damages by the Plaintiff for breach of tenancy Covenant(s).
 5. Failure /neglect and/or omission of the 3rd to 6th Defendants to approve and/or facilitate payment of the sum of **N14, 700, 000.00** (fourteen million, seven hundred thousand naira) only owed the Plaintiff by the 1st and 2nd Defendants since the year 2004.

FACTS AS PRESENTED BY THE PLAINTIFF

1. The Plaintiff is Citizen of the Federal Republic of Nigeria and erstwhile Landlord of the 1st Defendant in respect of a property consisting of six books of residential flats of 4- Bedrooms each which he erected under a Build, Operate and Transfer Agreement (BOT) and let to the 1st Defendant.

2. On the 23rd day of March, 1998 the Plaintiff and 1st Defendant entered into a Tenancy Agreement dated the same day by means of which the Plaintiff let the aforementioned property consisting of a yearly residential flats of 4- Bedrooms each to the 1st Defendant at a yearly rent of **450, 000.00** (four hundred and fifty thousand naira) only per flat and the sum of **N5, 400, 000.00** (five million, four hundred thousand naira) only for a term certain which expired on 24th March 2000.

The Plaintiff shall rely on the said Tenancy Agreement between him and the 1st Defendant dated the 23rd day of March, 1998 for its full effects and value at trial. The said agreement is attached and marked Annexure 1 in the Schedule of Annexure.

3. Upon expiration of the first 2- years term certain the Plaintiff and 1st Defendant renewed the aforementioned Tenancy Agreement for a further term of two years certain commencing from 23rd day of March, 2000 and terminating on the 23rd day of March, 2002 at a revised rent of **N500, 000.00** (five hundred thousand naira) only per flat totaling the sum of **N6, 000, 00.00** (Six million naira) only for the entire term payable in advance.

The Tenancy Agreement between the Plaintiff and the 1st Defendant dated the 23rd day of March, 2000 is attached and marked

Annexure 2 in the Schedule of Annexure and shall be founded upon at trial for its full effects and value.

4. The Plaintiff and 1st Defendant again renewed and aforementioned Tenancy Agreement upon expiration of the 2nd tenure for a further term of two years certain commencing from the 24th day of March, 2002 and terminating on the 24th day of March, 2004 at a revised rent of **N600, 000.00** (Six hundred thousand naira) only per flat totaling the sum of **N7, 200, 000.00** (Seven million, two hundred thousand naira) only for the entire term payable in advance.

The Tenancy Agreement between the Plaintiff and the 1st Defendant dated the 24th day of March, 2000 is attached and marked Annexure 3 in the Schedule of Annexure and shall be founded upon at trial for its full effects and value.

5. The Plaintiff avers that upon expiration of the 3rd Term of 2- years certain ending on the 24th day of March, 2004, the 1st Defendant through the Director of Administration of its Secretariat and by means of a letter dated the 6th day of November, 2003 entitled:

“RENEWAL OF LEASE ON PLOT 307 GABES STREET, ZONE 2, WUSE DISTRICT, ABUJA” expressed its desire to renew its tenancy on the property for a further term of 2- years certain and invited the Plaintiff to submit his proposal for the said renewal.

- The said Letter of 6th November. 2007 is attached and marked Annexure 4 in the Schedule of Annexure and shall be founded upon at trial for its full effects and Value.
6. The Plaintiff and the 1st Defendant subsequently agreed to renew the tenancy for another term of 2- years certain at a reviewed rent of **N700, 000.00** (Seven Hundred Thousand Naira) only per flat totaling the sum of **N8, 400, 00.00** (Eight million, four hundred thousand naira) only for the entire term payable in advance.
 7. However, the 1st Defendant suddenly refused to pay the agreed rent on the flimsy excuse that the property was a subject of litigation to which neither the Plaintiff nor any of the Defendants were parties. The Defendants relied on a letter written to them by solicitors to one Dr. Abiodun who claimed the property had been sold to him by a bank thus claiming tittle. The 1st Plaintiff however, remained in the property as tenant and held full possession of same for the tenancy years 2004/2005, 2005/2006, 2006/2007, 2007/2008 half year.
 8. By means of a letter dated the 13th day of March, 2007 and entitled: **“RE: PROPERTY AT PLOT 307 GABES STREET, ZONE 2, WUSE DISTRICT, ABUJA”** the 5th Defendant curiously recapitulated and recognized the plaintiff as the Landlord of the property and informed the letter through his property manager of the 1st Defendant’s intention to vacate the property owing to its new policy on

accommodation of its Staff. The 5th Defendant further made a rather absurd request on the Plaintiff to open an escrow account to enable the 2nd Defendant pay the accrued rents for the tenancy years 2004/2005, 2005/2006, 2006/2007, 2007/2008 half year.

The said letter attached and marked Annexure 5 in the schedule of annexure shall be relied upon at the trial for its full effect and value.

9. The Plaintiff in its reply to the 5th Defendant's aforementioned letter of 13th day of March, 2007 by means of a correspondence dated the 2nd day of April, 2007 and entitled:

“RE: PROPERTY AT PLOT 307 GABES STREET, ZONE 2, WUSE DISTRICT, ABUJA”

communicated his unequivocal position on issues raised by the 5th Defendant as follows:

- a. The Plaintiff acceded to the 1st Defendant's decision to discontinue with the Tenancy Agreement between it and the Plaintiff in respect of the subject matter property.
- b. The Plaintiff without mincing words refused the suggestion that he open an escrow account for the arrears of rents to be paid into same on the following grounds:
 - i. Extant banking requirements for opening an escrow account such as the one suggested by the 5th Defendant entailed making

the 1st Defendant, the Plaintiff and his adversary signatories to the said account

- ii. A situation where the Plaintiff's adversary in court would be a co-signatory to the said account was unacceptable to the Plaintiff.
- iii. The 1st Defendant was not a party to whatever litigation that was pending so it could not possibly be a signatory to the said escrow account.
- iv. The tenancy agreement for the subject matter property was between the Plaintiff as landlord and the 1st Defendant as tenant and there was no judgment or order of court directing the Defendants to stop recognizing the Plaintiff as Landlord of the subject matter property. It was thus incumbent on the Defendants to pay the rents due to the Plaintiff to whom they had always paid previous rents.
- v. The Plaintiff once again demanded for the arrears of rent accrued and due to him for the tenancy years 2004/2005, 2005/2006, 2006/2007, 2007/2008 half year. In the event of the Defendants remaining recalcitrant the Plaintiff requested them to the said rent in their custody pending hearing and determination of the pending suit NO: CV/204/2004.

The Plaintiff shall heavily rely on the said letter attached and marked

Annexure 6 in the schedule of Annexure;

10. The Plaintiff and Defendants subsequently conducted a joint terminal inspection of the property after which the Defendants paid the Plaintiff the sum of **N1, 449, 750. 00** (One million, four hundred and forty nine thousand, seven hundred and fifty Naira) only for terminal repairs falling under the responsibility of the Defendants.
11. Despite recognizing the Plaintiff as its erstwhile Landlord, carrying out joint terminal inspection with him and paying him the aforementioned sum as terminal repairs the Defendants inexplicably held on to the Plaintiff's sum of **N14, 700, 000.00** (Fourteen million, seven hundred thousand naira) only being arrears of rent owed the Plaintiff by the 1st Defendant for the tenancy years 2004/2005, 2005/2006, 2006/2007, 2007/2008 year half in respect of Six No. 4- bedroom flats known and situate at plot 307, Gabes Street, Wuse District, Abuja.
12. On the 15th day of June, 2012 the High Court of the Federal Capital Territory (FCT) No. 13 sitting at Gudu, Abuja entered judgment in favour of the Plaintiff setting aside the purported sale of the subject matter property by Access Bank Plc. to the Said Dr. Okwudili Abiodun thereby putting to rest any dispute to title in respect of the said property.
13. The Plaintiff by means of a letter dated the 2nd day of August, 2012 with reference No: PC/misc.719/12 entitled:

“In Re: property at plot 307, Gabes Street, Wuse District, Abuja” written by his solicitors immediately communicated the aforementioned judgment of FCT High Court to the Defendants. The Plaintiff also demanded for the **N14, 700, 000.00** (Fourteen Million, Seven Hundred Thousand Naira) only being arrears of rent owed the Plaintiff by the 1st Defendant for the tenancy years 2004/2005, 2005/2006, 2006/2007, 2007/2008 year half but the Defendants neglected and/or failed to yield ground or offer any explanation for not paying the said sum to the Plaintiff.

The said Plaintiff’s Letter of Demand of 2nd August, 2012 attached and marked Annexure 7 in the Schedule of Annexure.

14. Five months later and in the face of the Defendants’ studied silence to the Plaintiff’s demand for the subject matter arrears of rent, the Plaintiff through his solicitors communicated a reminder of the demand for the said arrears of rent to the Defendants via a letter dated the 18th day of January, 2013 and entitled:

“Reminder of demand for payment for payment of rent arrears in re: property at Plot 307, Gabes Street, Wuse District, Abuja”

but the Defendants despite receiving and acknowledging receipts of the Plaintiff’s demand for his money have continued to maintain studied silence on the issue and unduly hold onto the Plaintiff’s money.

The Plaintiff's Reminder of Demand is attached and marked Annexure 8 in Schedule of Annexure.

15. The Plaintiff avers that the initial communications on the tenancy between him and the 1st Defendant were made on his behalf by his property managers Messrs Bello & Co and on behalf of the 1st Defendant by the Director of its secretariat in Abuja and subsequently by the 5th Defendant when the 1st Defendant's secretariat was transformed into a Commission in 2006.
16. Even though the Plaintiff's demand has been brought to the knowledge and attention of the 3rd Defendant by means of the aforementioned demand notices, the 4th Defendant who is the Chief Executive Officer of the 2nd Defendant; coordinates the activities of all the institutions of the 1st Defendant; legal representative of the institutions of the 1st Defendant; represent the 1st Defendant in its external and international relations and is responsible for strategic planning and policy analysis and regional integration activities in the West African sub- region has refused/neglected to approve and direct payment of the Plaintiff's money to him.
17. The Defendants' action of unduly detaining the Plaintiff's money for several years has caused the plaintiff great psychological trauma as his business fortunes dwindled in absence of the subject matter

sum of money which he would have invested and gained sufficient profit over the years.

18. The Plaintiff was compared to engage the services of Messers Prime Chambers, the Law Offices of Ola Olanipekun and Co to approach this Honourable Court for redress and the process spent the sum of **N5, 000.000.00** (Five Million Naira) only as Legal Advice, follow up with the Defendants, Mileage; incidental expenses, professional Fees, General Cognate Advocacy and processing of documents.

The Plaintiff therefore instituted this action praying this Court for the following;

1. A DECLARATION that failure of the Defendants to pay the Plaintiff the sum of N14, 700,000.00 (Fourteen Million, Seven Hundred Thousand Naira) only being due to the Plaintiff for the tenancy years 2004/2005, 2005/2006, 2006/2007, 2007/2008 year half in respect Six No. 4- bedroom flats known and situate at plot 307, Gabes Street, Wuse District, Abuja constitutes a gross breach of the covenant to pay rent imposed by the tenancy agreement entered into between the Plaintiff and the 1st Defendant.
2. The sum of **N14, 700, 000.00** (Fourteen Million, Seven Hundred Thousand Naira) only being arrears of rent owed the Plaintiff by

the 1st Defendant for the tenancy years 2004/2005, 2005/2006, 2006/2007, 2007/2008 year half in respect of Six No. 4- bedroom flats known and situate at plot 307, Gabes Street, Wuse District, Abuja.

3. 15% interest on the sum of **N14, 700, 000.00** (Fourteen Million, Seven Hundred Thousand Naira) only.
4. The sum of **N100, 000,000.00** (One Hundred Million Naira) Only damages for violation of covenant to pay rent and for causing the Plaintiff great psychological trauma.
5. The sum of **N5, 000,000.00** (Five Million Naira) only being cost of prosecuting this suit

The Defendants in their defence did not dispute owing arrears of rent to the tune of Fourteen Million Seven Hundred thousand Naira, only for 2004/2005,2005/2006,2006/2007,2007,2008-six Months in respect of the Six No 4-bedroom flats situate at plot 307 Gabes street , Wuse District, Abuja but that they did not know the rightful person to whom the outstanding rent should be paid and did not want to make payment to the wrong person

The Defendants however denied the following reliefs sought by the Plaintiff and urged the court not to grant same.

1. Payment of **N5, 000,000** as Legal Fees incurred during the case against **Dr. Joseph Abiodun Okwudili**, Access Bank and others tussling for ownership of the rented apartment.

The Defendants contended that they are third parties in the suit and only a tenant who should not be involved in a tussle for ownership of the Property and could not have been liable for Legal Fees incurred in Ownership tussle

2. The Application for 15% interest on the sum of **N14,700,000**.
3. The Application for 100 Million Naira as damages and interest for violation of the terms of the lease agreement and the serious Psychological trauma suffered by the Applicant.

The Defendants therefore urged the Court to join Intercontinental Bank Plc or Access Bank Plc as an Intervener in this Suit with a view to determine with finality the appropriate Party who is entitled to the sum of **N14, 700,000**. Being rent for 2004/2005, 2005/2006, 2006/2007, 2007/2008 six months in respect of property situate at plot 307 Gabes Street, zone 2, Wuse District Abuja.

Sequel to this, the intervener Access Bank Plc., brought an Application to intervene as an interested party exhibiting the judgment of Federal Capital Territory, Abuja High Court and an Affidavit.

This Application was granted by the Court and parties were asked to join issues as to the appropriate person to whom the rent the subject matter of the dispute should be paid to.

ANALYSIS BY THE COURT

The facts of this case are not substantially in dispute. The Plaintiff's claims is the sum of **14,700,000.00** (fourteen million, seven hundred thousand naira being arrears of rent due to him from the Defendants for renting his property, (a Six No 4 bedroom flats situated at plot 307 Gabes Street, Wuse District , Abuja) between 2004 and 2008. He further claims the sum of

N100, 000,000.00 (one hundred million naira only) being damages for violation of the covenant to pay rent, as well as solicitors cost of **N5, 000,000.00**.

In their defence, the Defendants admitted the arrears of rent claimed by the Plaintiff but contended that they were willing and ready to pay the sum as at when due only to receive a letter from a third party (who subsequently asked to be joined as an intervener in the course of this suit) in demanding that the rent be paid to them. Accordingly, although the rent agreement was between them and the Plaintiff, they no longer knew the rightful person to whom the outstanding rent should be paid, hence the delay. The Defendants' denied the claim for legal fees, **N100,000,000.00** (one hundred million naira) as

damages as well as the claim of interest since the delay was not due to their fault, a fact they brought to the Plaintiffs notice. The Defendant urged the Court to join International Bank Plc (now Access Bank as a party in order to determine with finality the appropriate person to entitled to receive the arrears of rent.

In the course of the proceedings, Access Bank Plc, brought an application as an interested party to intervene. The basis of their application was the judgment of the Federal Capital Territory, Abuja Nigeria High Court between her and the Plaintiff as well as other parties.

It appears from the judgment that the Defendant entered into a Mortgage agreement with the Plaintiff in default of which the intervener in exercise of its right as a mortgage sold the property the subject matter of rent in this suit to one **Dr. Joseph Okwudili Adiodun**. It was on account of this that the intervener on account of the sale wrote the Defendants and demanded the payment of the arrears of rent to it rather than the Plaintiff and this is what placed the Defendants in a dilemma as to whom the arrears should be paid over.

It is interesting to note that the High Court of the Federal Capital Territory, set aside the sale as being null and void. Thus, the right of the intervener to claim the arrears has no basis whatsoever. The Intervener had argued that

once a property is on Mortgage, all rights accruing therefrom belongs to the Mortgage. We think however that this is not the position of the law.

The mortgaged property is merely a security for the loan of the mortgagor took from the Mortgage. The rights and privileges on the property still belongs to the Mortgagor during the subsistence of the mortgage.

Thus it was wrong for the mortgagee to have demanded for such rent, where there is a subsisting agreement between the mortgagor and a third party. Accordingly, the intervener has no right to claim the arrears of rent.

On the part of the Defendants, they were right in their judgment to withhold the payment for fear of paying to the wrong party and this fear is reasonable in the circumstances.

Accordingly, their non- payment of the arrears of rent to the Plaintiff was not due to their own fault, the claim of the Plaintiff to the sum of **N100,000,000.00**(one hundred million naira) as damages for breach of covenant, **N5,000,000.00**(five million naira) as solicitors fees and interest in the like sum cannot stand; and are hereby dismissed. The 2nd Defendant is ordered to pay the arrears of rent for the Plaintiff.

For the avoidance of doubt, the 3rd, 4th, 5th and 6th Defendants ought not to have been joined as parties to this suit and their names are hereby expunged from the suit.

DECISION

The Court adjudicating in a public hearing after hearing the parties in the last resort and after deliberating in accordance with law;

Orders the 2nd Defendant to pay to the Plaintiff the sum of **14, 700,000.00** (fourteen million seven hundred thousand naira only) being arrears of rent owed the Plaintiff for renting his property at Plot 307 Gabes Street, Wuse District Abuja.

AS TO COSTS:

Costs are awarded to the Plaintiffs against the Defendants. The Registry should access such cost.

Thus made, adjudged and pronounced in a public hearing this 14th day of February, 2018.

The Following judges have signed the judgment.

1. Hon. Justice Friday Chijioke Nwoke ----- Presiding
2. Hon. Justice Hameye Founé Mahalmdane --- Member
3. Hon. Justice Yaya Boiro ----- Member

Assisted by:

Djibor Aboubacar Diakite

-- Registrar